

# **DIVORCE STRATEGIES**

**& How To Be  
Alimony  
Free**



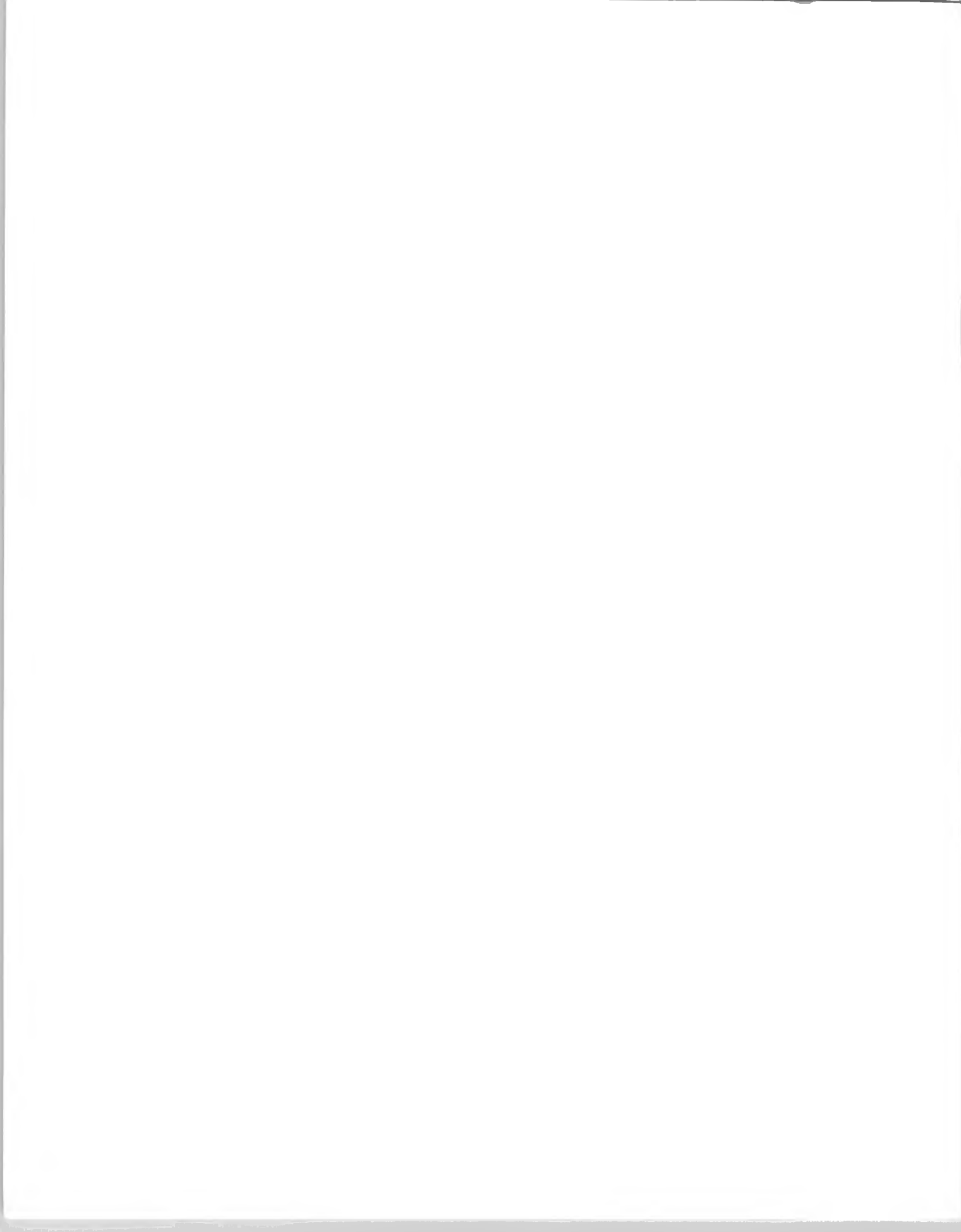
**A. Looking**

# ***Divorce Strategies & How To Be Alimony Free***



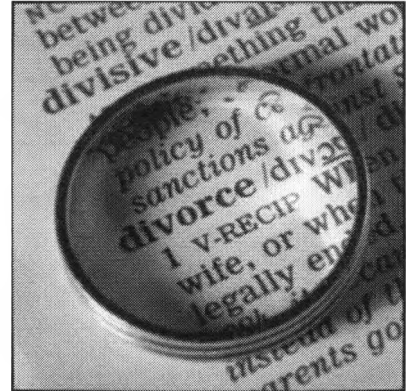
*If your rope needs to be broken*

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## ***INTRODUCTION***

If you see a divorce in your near future, I recommend you quickly learn about pre-divorce strategies and what can happen to you. This needs to be done before you file for divorce or have been served with the papers, as the impact upon your monetary assets and future quality of life can be enormous. Unfortunately the advice you get from friends is well-intended but pretty poor, and some of it is incorrect. Surprisingly you will learn you can't depend upon either the lawyers or the mediators to be pro-active and steer you on a straight course, as many do a poor job advising you. If this change in life is coming at you, you need to study Chapters 1 and 2 before you get run thru the divorce wringer. Be particularly wary of lawyers; they are generally hourly, and most will have no hesitation to "churn" your account to create as many billable hours for themselves as possible, with little regard to your outcome.



This is the worst that can happen to you ... ***"Permanent Alimony until Death"*** ...

So where do you start? ... Will this become your outcome for 10+ years of marriage? ... Beware you may already be another or soon-to-be alimony slave. Remember marriage is not supposed to be a life sentence, but the consequences of divorce can be a life sentence.

Post-divorce I had to ask myself – Did I even see this alimony life sentence or *Alimony Re-Marriage* coming? My answer was **NO!**

Didn't know beforehand about: 1) the 10 – 20 year marriage rule granting Permanent Lifetime Alimony depending on the state in which you get divorced, 2) required documentation for non-commingled pre-marital assets, or they will be considered marital property losing the premarital status, and 3) I had also figured during my brief pre-divorce analysis that an equitable distribution state was better than a community property state in which to have the divorce conducted. Wrong on all counts with \$40,000 in legal bills, another lesson not to be repeated.

A word of explanation: "Plan A" is live your life normally; "Plan B" is what you do when you cannot do "Plan A." So if circumstances force your hand – for example, permanent alimony – you may opt as I did, for "Plan B," which means circumventing the unforgiving unfair law and seeking a new life.

What really bothers me to this day, was all thru the divorce proceedings, never at any time were there any court questions, negotiation or discussion about my future life sentence of permanent alimony. Believe it or not, I never was asked, nor did anyone talk to me about this subject. Instead I was told that from legal precedence with no state published laws or guidelines, this was my life sentence. The rationale is often "justified" by the legal profession as "this is the legal precedent" (not state law) with reference to legal cases of the distant past. I was flashed one page from another person's settlement with the same life sentence as further proof that this is "right." Is this proper justification? – Absolutely not! So I agreed to it and settled with my Plan B already being prepped, but it was coercion. It is kind of like this - If someone comes up to you in an alleyway with a gun and says, "Give up your wallet," would agree to give up your wallet? That's how the divorce courts treat a person with 10+ years of marriage exposed to lifetime alimony. So this is how I began my journey ...

Most of us at the beginning or after this divorce life changing event, do not have the benefit of a coach/mentor who has done it before to advise and instruct us. How do you discuss the topic of "*How to Avoid or Escape From Alimony*" with anyone? So typically one begins discretely asking friends or with internet searches starting with "*Alimony Escape, Escape from Alimony*" ... Over time after not finding any relevant material, the search will drift off and evolve into the 2<sup>nd</sup> deeper phase with: "*Avoid the Alimony Dilemma, Offshore Banking, How to Hide, Disappear, Hiding Assets, and New & False Identity*" only to name a few. Surprisingly this topic's info at any level is difficult to find and research, but if one spends time and studies, the ropes can be learned. My 5-year journey led thru this maze to here with this manuscript for you to use, which is a record of my self-directed tutorial. I did not want to be a post-divorce participant in "*Permanent Maintenance Until Death*" or equivalent to "*Alimony Slavery*." So with my large financial exposure and desire for total post-divorce freedom, this written collage became my plan ...

Your study trail may quickly lead to the 3 – 4 divorce alimony internet blogs including "*Alimony Expatriates* and *Alliance for Freedom From Alimony*", that have valuable info coming from frustrated alimony payers fighting both the state(s) legal system and their Bar Association, but both are extremely stoic and slow-to-change. Then lawyer websites providing abbreviated advice to seek clients, but none of it comprehensive on where to go. In fact, every lawyer website I've seen purporting to give advice was really only to get clients to that particular firm.

As there was no roadmap of any kind, I continued to dig deeper for better guidance, but had the alimony \$5000/month clock ticking. Does that sound like a fortune? It does. It was not only my sentence, but the sentence of the editor of this book, so don't think it can't happen to you. The editor's ex-spouse sat on their every-growing behind and ate bon-bons, did nothing more, living on the alimony and child support.

A handful of books surfaced, but nothing focused on the issue "*How to Beat My Alimony Wrap*." I went quickly thru skip tracer web sites like "*Escape-Artist & Privacy-World*", the Canary Press book publisher message board, and many pseudo privacy advocate books, but the "*How to Be Invisible*" book proved to be the best initial resource. This planted the privacy seed for me on how to proceed. Then the monumental step of finding "*Alimony Expatriates*" – a Yahoo Groups website focused on permanent alimony payers with a platform of state alimony reform, provided the best backdrop and nationwide perspective of other individuals in the same shape or worse. My study trail continued gaining momentum, and this book became my real plan on "*How to Do It*" and not dream about it. I moved on to blaze my own trail.

During my discovery, I was also awakened to the wide breadth of quiet alimony sufferers out there (640,000 nationwide, see page 2 for details), and how many of these people's lives are consequently severely ruined post-divorce. In the research about the alimony and child support monetary collection mechanisms outlined in Chapters 11-12, I became aware of the really sad plight child support payers are living. I also observed the state-by-state alimony reform efforts stonewalled by politics, lobbyists, and the lawyer bar associations. Only one state, Massachusetts, has had partial meaningful alimony reform. One can easily conclude any significant nationwide or state alimony reform likely will not occur in our lifetimes.

## **ALIMONY AND CHILD SUPPORT**

The focus of this book is on alimony, not child support (CS). In the research process, I came across "*Fathers and Families*" an incredible group trying to solve the separate child custody injustice. I found universally an extreme high percentage of fathers take no issue with child support, and I also support this CS life responsibility obligation.

The resultant sole issue that occurs with combined CS and permanent alimony, it generally forces the payer to live on less than 33% of their gross income, which is impossible to do unless you make over \$125,000/yr. For most this is impossible, frequently resulting in arrears, expenditures of large amounts of money in courtroom dramas, bench warrants, imprisonment, bankruptcy, and further depletion of their post-divorce financial resources.



Combining CS and alimony also puts the alimony in a "different category" in terms of arrears collections since there are strict federal laws regarding collection of child support, but not for alimony. When the two are combined, it is all considered CS, and all subject to the harsh federal regulations and enforcement.

## **MY PERSONAL JOURNEY**

My initial assessment revealed that for many prior alimony escapees there were two typical escape routes: 1) liquidate all your assets, put them into a shoe box or safe deposit box, and then attempt to lead invisible lives as a fugitive, constantly moving while living in an RV, or 2) leave the country, the USA.

I decided neither option was the suitable route for me and made a conscious decision to find an alternative to allow me to continue leading my normal productive life in the US, not as a fugitive. I wanted to continue working, as I was not ready mentally, physically or financially for retirement. To do this, I had to learn how to become invisible as an individual, and make my employment and financial assets become equally invisible.



I had the necessary conviction to learn how it could be done so that my trail would become a cold case. I also decided in the future I have no intention of: 1) ever returning back to my divorce decree state court to argue my retirement Change in Circumstances (CIC) to stop or reduce the alimony, or 2) after 3 – 10 years post-divorce face a surprise request from my ex-spouse for more money, which incidentally can be done for a 2-year court review interval. So I began the process of reorganizing my life. The alimony nightmare or re-marriage was going to end.

And then unexpectedly it happened to me! Two or three months before my scheduled Plan B great escape to stop the alimony payments ... I lost my job and had to fully finish implementing my Plan B escape in short order. It became time to get a new job, move, and finish moving all financial assets ... to leave no discovery trail behind. I saw firsthand: 1) what happens when you are suddenly thrust into a scenario with no wage income, but have to continue paying substantial alimony from your life savings; 2) the perils of not being able to afford health insurance; and 3) finding a new job which, if you are 50+ or in a rural area, is tough or nearly impossible. That is why further depletion of your savings and bankruptcy can be the ultimate tragic outcome for many payers after a job loss.

Fortunately I was rehired 3 months later with my implemented Plan B in effect. In retrospect I was lucky with my life circumstances and confidence to have pre-planned an escape, with this self-taught methodology becoming my Plan B. But always remember, the ex and the asset searchers will come looking for you and for your money. As of the publishing of this book, my Plan B has been in effect for over 3-1/2 years. But I still continue always looking behind my back, keeping my invisibility while standing (always looking) in the shadows. Still, my life has moved forward.

## **FOR THOSE OF YOU THAT WANT TO JUMP AHEAD WITHOUT READING THE BOOK**

It is suggested that you jump to:

- Chapter 7 - page 81 - Planning Your Escape
- Chapter 11 - page 169 - How an Arrears Judgment is Enforced
- Chapter 13 - page 195 - Your Planning Steps

### **SO WHY, HOW & DID I WRITE THIS BOOK?**

I hope that with your study of this book, it will help you plan your divorce strategies beforehand and then if needed implement your Plan B, rather than be post-divorce reactive like most of us. If I had had this book's knowledge 2 - 3 years before my divorce finalization, the outcome would have been entirely different. Unfortunately I never found any book on alimony avoidance or this Plan B topic, and I looked really hard. So I researched and produced my own playbook.

One may ask where did the material come from that generated the factual material for the book? The sources came from many governmental and legal websites, as well as public message boards. I spent 24 months analyzing, rewriting, and reassembling the information into a cohesive outlined document. I was personally fortunate that 4 months before my divorce finalization with the initial beginnings of this book, that I knew my destiny, as my Plan B outline had been pre-planned. I just had to finalize the divorce and then make the post alimony invisibility details happen. My surprise was that the implementation of the roadmap details took longer than I initially thought.



Of real significance to those who read and need this book, the info and techniques presented are current and state-of-the-art as of the publishing of the book. I have tried to instruct you on how-to-do it, rather than tell you this or that could be done, and incorporate the decision making process background you will go through. After reading it, you will concur, "This book is the most comprehensive you will find on the subject."

There is more information presented than may be necessary, but to be successful one has to have a full understanding of the searcher's abilities, their tools, and the legal mechanisms that can come after you.

So to make your Plan B work, be sure to read and study this book taking the careful stance that the slightest error can result in your being caught. The ex-spouse will come after you to some degree. The long arm of the law will cross state lines and come after you if you owe CS. It does not come easy, but instead takes a lot of effort with the end result ... your **Freedom** is back!

Good luck in your endeavor, as "You Will Be Next" and can then say, "**Been There, Planned it, and Did it!**"

## CHAPTER 1

# ALIMONY - EQUIVALENT TO SLAVERY

What is wrong with our alimony state laws, and why are many forced to leave our present trapped and unfair lives? Permanent alimony or "*Lifetime Alimony Until Death*" ruins a person's life. Do the courts and lawmakers really wonder why people go on the run, break the law with a contempt charge, and maybe get jailed for non-payment? Of course not, but maybe they should realize their laws are creating the problems.

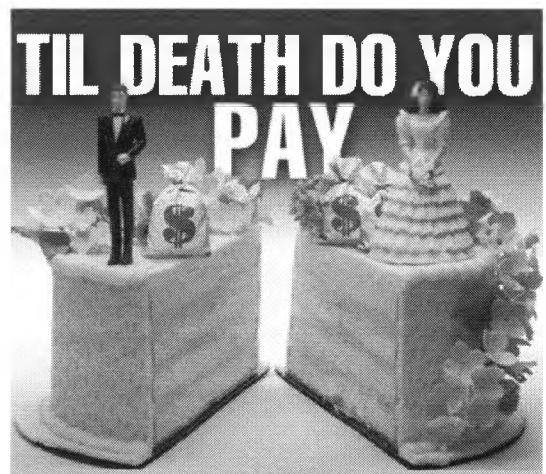
First, there should be the sense of fairness. You may be going broke with no job and still be in court trying to get your alimony reduced. The court will say the alimony must continue, and your lawyer will be only concerned about collecting their fee. One lawyer recently told their client, make the support payments even if they had to sell their kidney.

The decision at hand for you – will you defy the courts, the alimony marital settlement agreement (MSA) and the divorce decree, as **indirect civil contempt** may be the option for you? From here, it will take your willpower, conviction and confidence.

### POST DIVORCE OUTCOME

After the divorce, you start thinking - do you fight in court and continue to live and work in the US with only half your net earnings as your own, or do you now disappear by becoming invisible? Court time with outdated laws and judgmental prejudices stacked against you can be really expensive, and with \$300+/hr. lawyer fees, you may count on \$20,000+ legal fees. You will learn quickly "*Perpetual or Lifetime Alimony Until Death*" can be the serious outcome from your prior marriage.

The Court – via the lawyers – will require a detailed financial statement from each party in the divorce. I am convinced that they use this information to determine how much they can charge you in fees. One of this book's editors spent over a half million dollars in legal fees while earning approximately \$250,000/year.



If alimony is in the marital settlement agreement's (MSA) property settlement, and the agreement is incorporated into the final decree, the court doesn't have the power to change a dime of it, except by a separate expensive filing for "Change in Circumstances." A change in circumstances is generally a catastrophic event such as full age retirement or a disability severe enough for the Social Security



Administration to begin payments for disability. But if the court sets the alimony \$\$ amount, it maintains complete control as to whether it can be raised, lowered, or halted.

So ultimately, what is the long term toll on your life as a payer to be? Pay until death, no retirement, and forget about having fun or any money. The alternative is to plan your alimony escape. Even with the assistance of this book, this implementation effort will take 6 - 24 months minimum. So read, study and do it, as it now time to move on with your life ...

## ***DIVORCE STATISTICS - MOST ARE WORSE OFF***

- 2.5 million people divorce each year nationwide; 50,000 avg. per state.
- **640,000** ex-spouses pay alimony (IRS 2013\*\*); 96% are men, 4% women estimated.
  - 20,000 alimony payers have \$0 annual income (IRS 2011).
  - 375,000 alimony payers have annual incomes \$1 - \$100,000 (IRS 2011).
  - 225,000 alimony payers have annual incomes over \$100,000 (IRS 2011).
  - \$11.3 billion annual alimony payments (IRS 2013), calculates to \$17,600 avg. alimony payer/year.
  - A majority of alimony payers live on 1/3rd or less of their gross income in a subsistence life style.
  - Big picture, there are so few alimony payers in the US with 12,800 avg. per state, no meaningful alimony reform is likely in the foreseeable future.
- 300,000 couples over age 50 divorce annually, and in 2030 will balloon to more than 400,000 busted marriages.
- 16% of divorce cases request alimony; given in 6-15% approx. or 150,000 cases per year.
- 85% of the time wives begin the divorce proceedings as they want out, and some do it for the security of the money while getting rid of you. The result after divorce, most parties get screwed.
  - Post-divorce 100% of alimony payers experience a drop in their lifestyle standards. Those with incomes less than \$100,000/year really suffer as they cannot afford to live on 1/3 of their gross salary.
  - The recipient ex-spouse who was fortunate enough to divorce a payer spouse with an income over \$100,000/year, generally may have an increased lifestyle (as 25%+/- cohabitate) often with another mate on \$100K plus, with a nicer house, more expensive food, and nicer vacations after the divorce.
- Child Support:
  - 85% of custodial parents are mothers, and 45% of children living with a divorced mother live at or near the poverty line.
  - Only 50% of custodial parents are awarded child support, and only 45% receive the full amount.
  - \$32 billion annual child support collected for 17 million children (2013 OSCE report), or \$18,000/child in IV-D program.
  - \$7 billion (27%) of the money collected annually for child support is spent by federal and state Child Support Enforcement agencies for enforcement. (2009 OCSE report).
  - There is \$89 billion in uncollected or past due child support.
  - 11,000 approximate child support-related suicides annually.
- Divorce is a \$50 billion/year nationwide business spent on CS/alimony payments and legal expenses, with the courts spending \$21 billion/year of the total. This is why the avg. divorce costs \$50,000.
- \*\* The 2013 IRS archive records show 640,000 alimony payers who listed alimony as a tax deduction on their 1040 tax form filings, but this count includes both permanent and limited term alimony payers. To clarify, the 640,000 payers we are considering are alimony only, and do not include child support, as CS is not tax-deductible. So let's say of the reported total paying alimony, the best estimate is that 50% of the 640,000 are permanent payers or 320,000 individuals nationwide.

Post retirement when your wage income goes close to \$0, and you are living on your Social Security with declining savings while still paying alimony, you will only be filing tax returns if your income is above \$11,000

year. So your alimony deduction will not be taken and you are not included in the 640,000 count. As such, I believe there are approximately **500,000 permanent** alimony payers nationwide.

## **OPINION – THE FAIRNESS?**

You made a marriage commitment and a contract. If you opted out with a divorce, you have to settle up your side of the contract, but it should not be for life. All income from both parties belongs to both people, but was the contract you made for life? For the privilege of breaking the contract you have to offer a settlement or be ordered to keep your partner on equal footing with you financially speaking, until you die or until your ex-spouse remarries. That money would have been theirs if you had stayed in the marriage. Seems fair?

That's why there are prenups, and next time why you should think carefully before getting married. In the end, it's all about antiquated financial, contractual state law.

- Example - Married at 22, divorced at 37. 29 years till retirement.
  - You were married 12-15 years... Now you are responsible for lifetime alimony.... Paying alimony for 40 more years.
  - Paying 35% of your gross income... so you cannot retire until 67.
  - After 62-67 and if you go into arrears, your retirement social security money can also be garnished 50 – 65% to fund your ex-spouse's retirement. This is on top of the Social Security your ex-spouse can collect merely because that spouse was married to you for ten years, which is 50% of the social security you receive.
- It does not matter if your ex-spouse:
  - Was/is capable of working and makes a good living wage, you pay forever.
  - Was unfaithful, you pay forever.
  - Abused drugs or alcohol, you pay forever.
  - Abused you, you pay forever.
  - Now cohabitates and shares expenses with the new live-in lover, you pay forever.
- It does not matter if you re-marry, you will pay the first spouse forever.
- Even if you are married longer the 2nd time than the first, you pay the 1<sup>st</sup> ex-spouse forever.
- If you don't pay your alimony due to lack of money, you can be scrutinized once again by the courts, and get to wear an ankle bracelet or be put in jail.
- Reality Check, Unbelievable but True: A 40 year old guy married for 20 years who murders their ex-spouse and is sentenced to 20 years in prison, will be better off financially at age 65, than an ex-spouse who divorces and is hit with lifetime alimony.
- Another Amazing Alimony Fact: At the time of divorce, the retirement assets are split. But when the alimony payer retires, they still must continue paying alimony using only the payer's portion of the retirement money! It is utterly insane, the ex-spouse recipient gets to double dip at the payer's expense!



## **ANOTHER PERSPECTIVE**

Why is only one ex-spouse ordered to continue providing maintenance to the other? This is a mystery to logical thinkers, as in most marriages the participants make different contributions. In a traditional marriage the husband earns the money to support the family, while the wife bears children and stays home to rear them while performing domestic duties. When such a marriage dissolves it is not uncommon for the husband

to be ordered to continue his former contribution to the ex-wife in the form of monetary support, aka alimony. But what of the ex-wife? Should she not then be ordered to continue part of her former contribution to her ex-husband? Cooking, cleaning, laundry, shopping, something? Anything? A foolish suggestion? Why is it any more foolish to suggest the ex-husband should continue supporting his ex-wife with alimony and receive nothing in return? An ex-spouse to whom they are no longer related? Should the equal protection clause come into play here?

***It is time to plan your escape, as this is the time and opportunity for you to move on with your life.***

## **GENDER BIAS PERSISTS IN THE COURTS**

Gender bias does persist in the Courts; not against women, but against men. The courts almost always order a man to pay child support when the woman has the children, but usually delay in ordering a woman to pay child support if the man has custody, and may pressure the man to waive child support regardless of how much money the woman earns.



The courts are quick to throw a man out of the marital house, even if it is clear the woman is causing all the problems. If a woman says a man hit her, he is arrested and ordered to stay away from his home and children, even if he can prove he was not home at the time or there are witnesses who affirm the woman hit the man. When a man is caught lying he pays the price, but when a woman is caught lying no one cares. Women nearly never get jailed for violating a court order, but men often do.

Women who earn money off the books are not held accountable, but men have income imputed to them. Imputed income means the amount of money the Court believes the person "should" be earning. Men are usually ordered to pay more support than they can afford, and a woman is usually given more than needed when coupled with income she does or should earn. Advocates patrol the social welfare networks seeking women to help, and no one is there for the men. Courts give mothers custody even when the forensic expert recommends the father, but never give the father custody when the forensic recommends for the mother. Why waste time and money on forensics when judges often ignore the recommendation?

Bottom-line, the courts are very biased against men and the majority wage earners, and in favor of women.

## **TEMPORARY SUPPORT GUIDELINES**

*So why did my attorney tell me that I would have to pay a certain dollar amount of pre-divorce spousal support before we even went to court? How did they figure out this amount?*

If an attorney gives you an exact dollar figure for your upcoming temporary spousal support, in all likelihood they are using a formula or computer program to determine the exact amount of spousal support payable. Even though using these programs is valid for determining child support, these programs can only be used to determine Temporary Support, not post-divorce spousal alimony/maintenance or Permanent Support. Generally these are not binding, as the judge is given "judicial discretion" for making such determinations.

Temporary support has one party paying the other until the divorce proceedings are finalized, which is until the final judgment of divorce. Temporary Support is usually only determined by your current gross income alone. Courts cannot rely upon computer formulas to determine the amount of Permanent Support, as they must weigh the factors listed in the respective state's Family Code. Therefore, an attorney who tells you the exact amount of your post-divorce spousal support payment is likely guessing or discussing temporary support only. The final amount of permanent spousal support determined by a court or the marital settlement

agreement (MSA), might be quite different from the temporary spousal support amount. For alimony, one can expect up to 33% +/- of your gross income to be the spousal support level granted.

Recommendation: Get a low paying job (50% or less of present income) three years before divorce filing. They generally look back three years, but not longer. Make this a high priority.

## **ALIMONY**

*Alimony is the money the ex-spouse pays to the other by court order for support/ maintenance.*

In recent years, alimony due to negative connotations has been relabeled to maintenance or spousal support. Generally, alimony was awarded traditionally to the wife and paid by the husband. However, during the 1970 - 80's judges occasionally began to award alimony to the husband. Alimony is now awarded to either spouse in an effort to maintain the standard of living that both parties were accustomed to during the marriage.

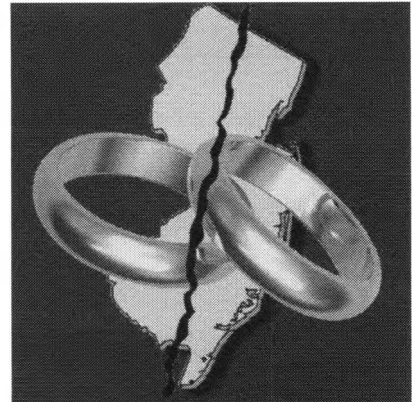
Alimony or temporary support awarded prior to the divorce is called pendente lite alimony. If ordered by the court, it is tax deductible to the payer, and becomes taxable income to the recipient.

At the time of the divorce if alimony is awarded, it can be one or a combination of the following:

- **Permanent**: This alimony type is to be paid until either the "*death*" of the payer or the remarriage of the recipient. This is the worst scenario that can happen to you for a 10+ years marriage scenario. Smarter marital settlement agreements (MSA) should include: 1) a "cohabitation" clause that states alimony ends when the recipient cohabits with another person in the avoidance of marriage and 2) automatic curtailment when the payer reaches full retirement age (so you don't have to go back to court for a Change in Circumstances and maybe get denied). But the attorneys do neither of these proactive defenses for you. So you continue to pay ...
- **Lump Sum**: This alimony type has one payment instead of periodic (usually weekly or monthly) payments. This alimony is taxable, so consult with a CPA experienced in divorce to determine the lump sum payment tax consequences prior to agreeing to it. Beware of the IRS's 3-year tax recapture rule (see page 41.)
- **Temporary**: Lasts for a specific period of time such as one to two years, and may be awarded when the persons are on almost equal ground but due to certain circumstances, one person may need temporary financial assistance to "get on their feet," or for any other reason the Judge wants to give.
- **Rehabilitative**: This is the most common awarded alimony for situations where the recipient is younger, or able to eventually enter or return to the work force and become financially self-supporting. May include payments for the education necessary to enable the recipient to become self-supporting.

Every state has its own criteria for determining the need and extent of alimony, however the following general factors may be considered:

- Marriage duration.
- Age, as well as physical, mental, and emotional state of each party.
- Earning capacity of both parties, and difference in income.
- Other income, including but not limited to interest and dividends.
- Education of the two parties.
- The contribution by one spouse to education and furtherance of career of the other.
- The contribution of one spouse as a homemaker.



- How much earning power will be affected by the parenting requirements of the custodial parent.
- The children.
- Your premarital or inherited property.
- Any pre-nup agreement.

The judge may consider any economic circumstances of either party that they deem to be just or proper. The amount of alimony payments are generally ordered based on the above considerations. As with any other aspect of your divorce, you should try to negotiate your alimony within the marital settlement agreement (MSA), rather than have a judge arbitrarily determine if your situation will include alimony and how much will be awarded.

## **ALIMONY GUIDELINES**

Surprisingly after an extensive search, I found there are no specific legal documented alimony guidelines (only child support) for any of the 50 states, and certainly no consistency from state-to-state. As there is no basis a Court can apply, what has resulted is that judges use their own particular parameters to help them decide about the amount of alimony.

Courts have not settled on a method to calculate any resulting payments, so it's left to the Court's judgment that plays into the MSA development.

Alimony guidelines have been in existence for some time, but there is nothing in most state statutes that quantifies the alimony percentage, dollar amount, or duration. In 2007, the Chicago-based American Academy of Matrimonial Lawyers (AAML) tried to provide a starting point when it recommended alimony guidelines. The stated goal was more predictable and equitable results. The group studied approaches in different parts of the country to produce a formula that could work across jurisdictions, but this has no legal basis. Attorneys have seized on this lack of direction to give them an opportunity to bring their clients to court again and again to fight about alimony, creating an ongoing "cash cow" for the attorneys. As far as Judges' rulings, well remember they are first and foremost attorneys themselves.



The income discrepancy between you and your spouse is generally the most important aspect for the judges to consider when determining alimony. When it comes to facing divorce, many men believe winning in court is how you win your divorce, and unfortunately 90% of those men learn that nothing could be further from the truth.

If the court does reward your ex-spouse post-divorce spousal support or alimony, you can appeal years later the MSA or the court's decision with an expensive Change in Circumstances filing. So it is better to be proactive now to enhance your chances of having lower or nonexistent alimony payments. Hence, it's critical you build a very solid case before divorce, and here's why:

- Men in the same situation can pay drastically different amounts when it comes to alimony. So why do some ex-spouses get excellent alimony agreements and others don't?
- Your strategy and approach may strongly influence how much if any alimony you will owe.
- At its simplest, your case should be built around providing evidence that your ex-spouse can get by on the amount you feel is fair based on their ability to work, not on your spouse's defined financial need. Be aware that the Judge may not even consider the spouse's earning capacity, or it may be a tiny factor in consideration.



- You can do this by providing documentation of your ex-spouse's income or job posting they would be qualified for, and the level of income those jobs would provide to the ex-spouse. You can also hire a forensic expert, but don't count on that expert's findings to be respected by the court, even if unrefuted.
- All of this helps the court understand how much money the ex-spouse really can get by on and maintain a reasonable standard that doesn't bankrupt you. Never forget the Court's decision may simply be a whim of the judge.
- Action Plan: If married for more than 10-15 years, permanent alimony will be your only outcome in most states if you are the larger wage earner. In California and New Jersey for example, you can be married from age 20 to 30, then pay permanent alimony for the rest of your life. Incredible but true.
- To cover your bets, get a lower paying job three years before the divorce if possible. This is the most important factor, your ace card. Of course, that means you know divorce is in your future, and you can put up with living with your spouse for those three years.

No matter what your strategy is or how well you play your cards, if there is an income discrepancy, alimony is likely to be part of your future. The amount is all up to the Judge.

### **HOW MUCH ALIMONY WILL YOU HAVE TO PAY?**

That is one of the hardest questions for a divorce lawyer to answer. The real answer is "They don't know," and no lawyer wants to say that to a client.

The reason they don't know is that alimony is left up to the judge's discretion based on several factors (age, health, income, length of the marriage, etc.) set forth by the state legislature. The Court doesn't and cannot use a statistical approach to determine alimony based upon the state laws.

The results vary widely from case-to-case and bewilder anyone who has tried to plot alimony against incomes and marriage duration, as there seems to be little rhyme or reason. As an example, recently several attorneys were given the same hypothetical facts and asked to write out an alimony award, and they all provided different alimony awards.

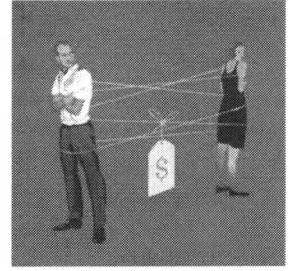
While no state has yet enacted strict quantitative formulas akin to federal sentencing guidelines for post-divorce alimony, bar associations and legislators are nevertheless providing their own quantitative guidelines suggesting they be used rather than relying on independent judicial discretion. Codified guidelines for temporary support or alimony while a divorce is pending, known as alimony pendente lite, are becoming more common; however, they only offer judges a framework for determining permanent awards.

The American Academy of Matrimonial Lawyers (AAML) report suggests the following framework: Take 30% of the payer's gross income minus 20% of the payee's gross income. That amount when added to the gross income of the payee, should not exceed 40% of the combined gross incomes of the parties. The duration of the award should be calculated by multiplying the length of the marriage by a certain numerical factor between 0 and 1.

It would be nice to have a starting point that this is more or less what you're going to get expect. Again, judicial discretion will trump such calculations, and thus they are of limited value. Too bad.

## **MORE STATES ARE LOOKING AT ALIMONY SPOUSAL SUPPORT FORMULAS**

Many agree that divorcing spouses deserve more predictable outcomes. As a result some states are starting to examine the uncertainty of alimony awards, as some policymakers take aim at a spousal support system that's been attacked as antiquated, unbalanced and unfair. Alimony – it is argued – should last for a “reasonable period of time” until the recipient becomes self-supporting, usually about 2 - 5 years, but this is not the case. Remember the legislators are lawyers, and Bar Associations are rich matrimonial lawyers who want the divorced individuals to have as much “in court conflict” as possible in order to increase their income.



### Judicial Discretion

Many lawyers say that allowing a judge's discretion to weigh these factors offers flexibility that formulas don't. States usually provide judges with factors to consider in reaching an alimony decision, including the length of the marriage, the age and health of the parties, standard of living during the marriage, and the ability of each party to acquire assets in the future. The previously given list (page 5) is reasonably accurate in terms of what the judges are “supposed to” consider.

Others say the answer may be avoiding the issue altogether. One solution may be an upfront lump-sum payment in lieu of alimony, if there are enough marital assets for this option. An ex-spouse can be awarded alimony, but that doesn't guarantee they're going to receive payment. If they get a lump sum, then it's over and done with it. However the real downside is the payer is financially destroyed first by the award of at least half the marital estate, and then followed by a monetary lump sum to provide a future lifestyle for the recipient ex-spouse. This clearly is not fair and doesn't work either. And to make matters worse, the recipient ex-spouse can later go back to court and receive a court order for the paying spouse to pay again!

## **ALIMONY/ CHILD SUPPORT GUIDELINE SOFTWARE CALCULATORS**

There are at least 3 well-known calculator programs that provide estimates, but are not binding for alimony:

MarginSoft Support Program: A calculator for the family law attorney provides an easier way to quantify support based on some state guidelines. The software program was developed by a Michigan family law attorney who reviewed a myriad of child support and alimony cases over the last 30 years, and incorporated alimony/maintenance theories into the program. It is available for the 6 states of Florida, Kentucky, Maryland, Michigan, Washington and Maryland, but not for the other 44 states.



The DissoMaster (California) and another program by Traxler Software are similar, but these three programs are about it. Child support has formula guidelines in most states, but for alimony spousal support there are no guidelines. It is important to note that these software guidelines are not binding on the court and if a court relied on them alone, it would be reversible error. Some judges use the guidelines as a starting point for analyzing cases, and certainly they will be used by attorneys in settlement negotiations. Most importantly, lawyers may be able to give at least a preliminary answer to the “how much” alimony question.

MarginSoft Alimony/ Child Support Calculator

## LIMITED DURATION VS. PERMANENT ALIMONY

In divorce cases where alimony is an issue, it is not merely a dollar amount issue, but the length of time must also be decided. Before 1990 there were only two types of alimony - permanent and rehabilitative. Then many state laws were amended circa 2000 to add limited duration and reimbursement alimony.

By statutorily allowing limited duration alimony (LDA) for a term of years, the legislature gave the courts the authority to do what attorneys had been doing for their clients all along through negotiated agreements. This flexibility has been helpful to divorce litigants, since not all cases warrant permanent or rehabilitative alimony.

However, what is the line of demarcation between an award of limited duration alimony and permanent alimony? Unfortunately there is no clear line, and the ultimate resolution depends on the facts of each case, as well as the judge's perspective. In attempting to resolve this issue, case law is instructive in distinguishing between the two types of alimony.

Limited duration alimony is available to a dependent spouse who made contributions to the marriage, if the marriage is of short duration. Permanent alimony is awarded after a lengthy marriage, in recognition of prolonged economic dependence and sustained contribution to a marital enterprise.

While all the statutory factors in determining alimony must be considered (such as need of the party, ability to pay, health of the parties, standard of living during the marriage, etc.), the duration of the marriage is the defining distinction between whether permanent or limited duration alimony is awarded. Yet the question remains, what is considered a short term marriage, and what is a long term marriage? And what is known about intermediate length marriages? There is state-to-state variation.

Generally it can be gleaned from case law that marriages between 10 - 12 years are of intermediate length, and marriages of over 20 years are considered long term marriages. Although it is not known whether long-term starts at 13 years or some other number, it is known that permanent alimony will be awarded in a long

term marriage, and LDA will be awarded in short term marriages. LDA is considered appropriate for marriages of intermediate length, and in certain circumstances it will be extended.

### ***THE TEN-YEAR RULE - ALIMONY SPOUSAL SUPPORT THRESHOLD***

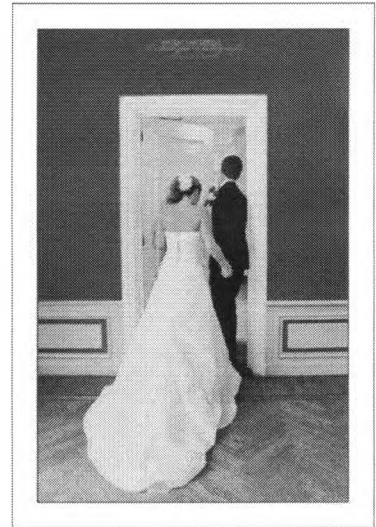
On a recent radio show a listener raised the post-divorce spousal support issue and the so-called "Ten Year Rule." Another listener recommended that a previous caller divorce his wife before ten years of marriage because of the "Ten Year Rule," as they would have to pay the spouse alimony indefinitely. Immediately numerous other callers began calling and stating their understanding of this rule. This response showed the general audience's misconceptions about this spousal support matter.

#### General Concept – Retainage of Jurisdiction

The law states that "Except upon written agreement of the parties to the contrary or a court order terminating spousal support, the court retains jurisdiction indefinitely in a proceeding for dissolution of marriage or for legal separation of the parties where the marriage is of long duration." Beware, whatever county court where you divorce will retain jurisdiction forever.

#### Long Duration

Any marriage that is longer than ten-years can be presumed "lengthy." However, in some states under limited circumstances, even shorter marriages may be deemed "lengthy."



#### Setting the Duration and Support Amount - How Long Does Alimony Last?

When a court determines the amount and duration of permanent spousal support, they are supposed to weigh eleven factors.

- The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage;
- The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party;
- The ability to pay of the supporting party, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living;
- The needs of each party based on the standard of living established during the marriage;
- The obligations and assets including the separate property of each party;
- The duration of the marriage;
- The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party;
- The age and health of the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party where the court finds documented evidence of a history of domestic violence against the supported party by the supporting party;
- The immediate and specific tax consequences to each party;
- The property brought to the marriage by either spouse;
- The balance of the hardships to each party;
- The goal that the supported party shall be self-supporting within a reasonable period of time.

Except in the case of a marriage of long duration, a "reasonable period of time" generally shall be one-half the length of the marriage. However, nothing is intended to limit the court's discretion to order support for a greater or lesser length of time based on any of the other factors listed, the circumstances of the parties, and any other factors the court determines are just and equitable.

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