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Divorce Mediation Keeps Alimony Focus On The Future

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Kimberley Keyes reviews how divorce mediation helps spouses negotiate alimony by focusing on the future, not the past.



If you and your spouse decide you need a divorce, there are numerous issues that you will need to resolve, ranging from child support to the division of assets. One major issue comes up in some divorces, also known as spousal support. Alimony is among the more contentious issues that arise in Massachusetts divorces. It is also one best divorce-related issues to resolve through mediation. Alimony is defined under Massachusetts law as “the payment of support from a spouse, who has the ability to pay, to a spouse in need of support for a reasonable length of time, under a

court order.” In many cases, alimony is the most difficult legal issue to resolve without involving a neutral third party, like a mediator or a judge, because alimony is determined by many factors that can prove contentious. It is often said that “the hardest check to write” is an alimony check to a former spouse. It is precisely because alimony can be source of such heated debate that [divorce mediation](#) can be the best way to find a solution.

Why do Former Spouses Sometimes Need Alimony?

In many marriages, each spouse makes different contributions. For many decades, a “traditional” marriage involved a husband working outside to financially support the family, while the wife’s contributions came as a homemaker and through child-rearing. This traditional arrangement often resulted in the wife being completely financially dependent on the husband’s income. If the marriage lasted for many years, this frequently meant that any professional skills the wife possessed early in the marriage could be obsolete by the time of the divorce. Even if wife had the skill and desire to enter the workforce later in life, the years spent at home often degraded her employability, wage history and professional credentials. For women in a traditional marriage, divorce could be financially catastrophic. Without the husband’s income to rely on, a wife who spent her prime working years at home raising children or homemaking would find herself unable to support herself. Of course, over the last two decades, the standing of women in the American workplace has changed drastically. Men still out-earn women in the workforce, but the number of women earning bachelor’s degrees now [substantially exceeds](#) the number of men graduating from college. Many marriages now feature “dual income home”, where each spouse works. However, even when both spouses work, there is frequently a disparity between each spouse’s earnings. Indeed, as women have surged in the workplace over the last two decades, it is increasingly common to encounter couples in which the wife significantly out-earns the husband. Moreover, many public opinion polls in recent years suggest that more and [more fathers view parenting as central to their identities](#) in ways that fathers from

previous generations did not. As a result of these two trends – gains in the workforce by mothers and increased parental roles for fathers – family law attorneys have seen a major increase in divorces in which a stay-at-home father was the equal or primary caregiver for children while a working mother was the primary wage earner. This dynamic has resulted in an increased in shared custody arrangements, more frequent child support payments to fathers, and for spouses without unemancipated children, an increase in *former wives paying alimony to their former husbands*.

How is Alimony Supposed to Work?

Gender is often a red herring in discussions about alimony. The alimony debate is often framed as husbands vs. wives, but the real issue is simply a matter of earnings. When one spouse earns significantly more than the other spouse, alimony is a potential issue in a divorce. The purpose of alimony is to equalize – to a degree – the post-divorce income levels of spouses, thereby enabling the lower-earning spouse to approach (but perhaps not fully achieve) the lifestyle and station that the spouse enjoyed during the marriage. By enabling the financially dependent spouse to receive support payments from the higher-earning spouse, both spouses can theoretically enter their post-divorce lives with economic stability. In Massachusetts, alimony orders are constrained by the Alimony Reform Act (ARA), a 2011 statute that provided a comprehensive alimony framework. The ARA attempts to balance the post-divorce needs of spouses by capping the amount and duration of alimony. Under the ARA, alimony is generally limited to 35% of the difference between the parties' gross incomes. The 35% "cap" is intended to provide the lower-earning spouse with an opportunity to maintain elements of the marital lifestyle enjoyed during the marriage – while acknowledging that the higher-earning spouse should nevertheless retain the majority of his or her earned income after the divorce. In terms of duration, the ARA determines how long a spouse will receive alimony based on the length of the marriage. For a 5-year marriage, the ARA limits alimony to 2.5 years (i.e. half of the length of the marriage). For a ten-year

marriage, the ARA limits alimony to 6.0 years (i.e. 60% of the length of the marriage). For a 19-year marriage, the ARA limits alimony to 15 years (i.e. 80% of the length of the marriage). For marriages over 20 years, ARA generally only limits the duration of alimony as follows: the paying party reaches federal retirement age, the receiving party remarries or cohabitates with a new partner, or either party dies. It's important to note that alimony orders are generally modifiable under Massachusetts law, and that judges are not required to follow the ARA if the facts of a particular case warrant a deviation. It can be difficult to predict the future at the time of a divorce, and the modifiability of future alimony can have a significant impact on negotiations. Although the ARA provides Massachusetts judges with many guideposts for determining alimony, litigating alimony at trial is often highly unpredictable. Massachusetts appellate decisions are full of examples of Probate and Family Court judges deviating from the ARA in various ways. (Indeed, where the 35% cap is only that – a cap, not a rule – many alimony trials result in orders that are lower than the 35% difference. The point is: litigating alimony is unpredictable.)

Discussing Alimony Can Be Emotionally Tense

Unfortunately, the issue of alimony payments can cause emotional tension between spouses because the amount paid – or whether alimony payments need to be paid at all – is determined by factors that may have led to the divorce in the first place. These factors under the ARA can include:

- *The current or the potential income of each spouse,*
- *Contributions, both economic and non-economic, to the marriage,*
- *The marital lifestyle and the ability of each spouse to maintain it after the divorce, and*
- *Lost professional opportunities due to the marriage.*

Each one of these is a potential landmine for disagreement and *negative emotions*, because they are often the very source of the disputes that led to the divorce, and now they have to be distilled into a dollar amount for the purposes of support payments. Alimony is also often complicated by the feelings each spouse has how the marriage ended. If one spouse feels he or she dutifully stuck through the marriage – through the good times and bad – only to be left by the other spouse, that is likely to affect both spouses' perspectives on alimony. In the end, alimony is highly symbolic. It represents the sacrifices made by both spouses during the marriage. What each spouse gave up, what each spouse put in. A lower-earning spouse may feel he or she sacrificed his or her career for the family, only to find they must fend for themselves financially, long after their professional opportunities dried up. A higher-earning spouse may feel he or she spent the entire marriage supporting the financial needs of the other spouse, only to find that he or she must keep paying – even if the lower-earning spouse was the one who chose to end the marriage and file for divorce.

Divorce Mediation Keeps the Focus on the Future

It is very easy, and all too common, for alimony discussions to focus on the past. If one spouse sacrificed professional advancement to enable the other spouse to climb the corporate ladder, the alimony discussion may cause lingering resentment to resurface. Divorce mediation minimizes these conflicts by keeping the focus on the future, not on what has already been said and done. The whole point of alimony and spousal support is to ensure that both spouses have some financial stability after the divorce. Divorce mediation recognizes that alimony is not about retribution, but rather making sure that both spouses are able to live comfortably in their post-divorce life.

Alimony Solutions Through Divorce Mediation

Although alimony can be emotional, it is also an area that greatly *rewards creativity when crafting settlement solutions*. Below are just a

few of the custom solutions a mediator can help divorcing spouses reach to resolve alimony:

1. **Alimony buyouts** – *In many cases, parties can avoid alimony payments by adjusting the division of marital assets to provide the would-be alimony recipient with a larger share of assets in exchange for waiving the right to receive alimony in the future. Negotiating a fair buyout is an area where an experienced mediator can assist. Calculating buyouts often involves examining how much alimony a spouse could theoretically receive under the ARA, then generating a buyout based on the risk/reward between the certainty of a lump sum buyout and less certain alimony payments made over many years.*
2. **Child Support vs. Alimony** – *In cases with unemancipated children, child support and alimony are often competing issues. Depending on how much alimony a spouse could be theoretically entitled to under the ARA, versus how much a party may receive under the Massachusetts Child Support Guidelines, many mediated divorce agreements include custom solutions that balance alimony and child support in the most advantageous way possible.*
3. **Tax Deductibility** – *Starting in 2019, alimony will **no longer be tax deductible for the paying party**. The loss of the deduction will have a significant impact on alimony negotiations – and also creates a race to the finish for spouses seeking to take advantage of the deduction before 2018 ends.*

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Divorce mediation is uniquely suited to resolving alimony issues because mediation is designed to overcome strong negative emotions, while focusing on creating custom solutions that fit the real-world needs and interests of each spouse. Despite the emotional weight, alimony issues are often best resolved through creative settlements in which each party trades the uncertainty of litigation for a predictable compromise.

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