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What Is The Point Of Alimony And Why Is It Such A Difficult Topic To Discuss?

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Divorce Mediator Carmela M. Miraglia discusses the point of alimony and the difficulties and stigma surrounding it.

Out of all of the issues you might face in a divorce, alimony is arguably the most contentious. Unfortunately, the conflict that normally surrounds alimony discussions is due, in large part, to the very nature of alimony itself. Alimony tends to generate strong emotions that can aggravate an already volatile situation. It is crucial to remember that as you head into a [divorce mediation](#) you may have to tackle alimony at some point in the mediation sessions.

The Two Problems that Alimony Aims to Solve

Practically speaking, alimony represents an attempt by the court to solve two very real issues that [lower-earning spouses](#) often face in a divorce:

- 1. To avoid leaving one spouse “empty handed” after the marriage when that spouse provided uncompensated work during the marriage, such as raising children or homemaking.*
- 2. To avoid forcing a spouse to suddenly fend for him or herself in a working environment (in which they are unfamiliar and unprepared) after the spouse dedicated years of his/her life to the marriage at the expense of their own professional growth.*

These issues are commonly faced by spouses who have raised children during their marriage, where one spouse made the decision to stay at home with the children while the other spouse was solely responsible for earning an income and supporting the family. Similarly, is also common – particularly with wealthier couples – for one party to work and the other to serve as a homemaker (sometimes referred to as a “housewife” in yesteryear). In these cases, even if the stay-at-home-spouse had a professional life before taking on the role of homemaker, their professional skills and experience will have withered during their absence from the working world. It has long been said that marriage is like a contract. In Massachusetts, at least, a working spouse who takes on the burden of financially supporting a stay-at-home-spouse cannot fully escape that burden through divorce. Of course, under the state’s alimony statute, a shorter marriage typically results in a shorter alimony obligation. The durational rule reflects the underlying theory that alimony is a form of “replacement pay” for the work experience lost by the stay-at-home-spouse during his or her years in the marriage. The law presumes that a stay-at-home-spouse will be able to re-enter the work force more quickly than a spouse following a long-term marriage, when the spouse’s reduced focus on career is presumed to be more pronounced and long-lasting.

When Does Alimony Become an Issue in a Divorce?

Mediation is not the same as litigation, but in general, the issues that need to be resolved in a mediation track fairly closely with the type of issues that would need to be resolved in typical divorce with similar facts. Every case is different, but there are several general factors that make alimony more less likely:

- ***Is there an income/earnings disparity between the parties?*** At its heart, the purpose of alimony is to equalize (to a degree) the income of former spouses where one spouse earns substantially

more than the other. The greater the disparity in earnings, the higher the likelihood of alimony as an outcome.

- **Longer marriages tend to produce more alimony.** Under the [Massachusetts alimony statute](#), the duration of alimony (i.e. how long alimony will last after the divorce) is based on the length of the marriage. Longer marriages result in longer alimony orders. With shorter marriages, courts will sometimes order parties to pay rehabilitative alimony or transitional alimony, which are both limited to five years, and are both intended to provide support to a spouse who is re-entering the workforce or working towards economic independence.
- **Is one spouse disabled or in special need of support.** Simply put, if a spouse suffers from a medical disability that makes him or her particularly vulnerable economically, alimony becomes more likely, [regardless of the length of the marriage](#).
- **Child support usually trumps alimony before emancipation.** The alimony statute provides that that alimony cannot be calculated based on income that has already been used to calculate child support under the [Massachusetts Child Support Guidelines](#). The child support guidelines apply to the first \$250,000 in combined annual income earned by the parties each year. If spouses earn less than \$250,000 in combined income, and there is a child support order, it is less likely that alimony will be an issue, at least until the children are emancipated. If spouses earn combined income over \$250,000, the excess income above \$250,000 per year is more likely to be treated as a source of alimony, to be paid in addition to child support. (Note that there are many quirks involving alimony and child support, including cases in which a custodial parent earns far more than a non-custodial parent. In such cases, the custodial parent sometimes pays alimony to the non-custodial parent, who, in turn, pays child support back to the custodial parent. In addition, alimony can sometimes be delayed while child support is being paid, only to [commence once children are emancipated](#).)

- **Are there not enough assets for an alimony buyout?** In many divorces, alimony is avoided through a buyout, in which the spouse accepts a larger share of the assets in exchange for waiving his or her right to receive alimony. In cases where there are not enough assets to go around, however, a buyout becomes difficult, and alimony becomes more likely.
- **Did one parent sacrifice their career for child-rearing or homemaking?** The “classic” alimony case involves a medium (10-15 years) to long-term (15+ years) marriage, during which the spouses agreed that one spouse would work as the “breadwinner” and the other spouse would stay home or work part-time while raising the couple’s children or acting as a homemaker. By the time a divorce occurs, the stay-at-home spouse has often passed their prime work years – or is so far behind professionally that he or she can never hope to become a high-earning professional. It is for this “classic” scenario that alimony was conceived, and such marital arrangements continue to persuade judges to enter alimony orders to this day.
- **More wives now pay alimony to former husbands.** It is worth noting here that as more women enter the workforce, it is becoming increasingly common to see *former wives paying alimony to former husbands*. At some point in the fairly recent past, such payments were considered taboo; this stigma appears to be vanishing with each passing year, however.
- **Many variations in between.** The above examples are only some of the more common factors that make alimony more or less likely. Many divorces feature a mix of multiple factors or feature gray areas that are more difficult to define. Indeed, it is in the murkier cases where negotiating alimony through mediation – rather than risking a judge’s decision – is often the wisest course.

What Problems Does Alimony Seek to Resolve?

While it is not a perfect system, alimony aims to *resolve the problems* above by requiring the higher-earning spouse – typically the spouse

who worked throughout the marriage and maintains a solid income at the time of the divorce – to make regular support payments to the other spouse for a period of time after the divorce. These payments are meant to resolve the two underlying issues by:

1. Acting as an informal way of compensating the stay-at-home spouse that supported the marriage but had not actually earned any money at the time, and
2. Ensuring that the lower-earning spouse does not experience a dramatic decline in the *lifestyle he or she enjoyed during the marriage* as he or she seeks to gain economic independence after the divorce.

There is no question that alimony has been the subject of withering criticism by those forced to pay a former spouse long after the marriage has ended. Regardless of one's personal feelings, alimony is a real and important issue in Massachusetts, and spouses seeking a divorce must grapple with alimony just like any other issue.

Why Is Alimony so Contentious?

The concerns outlined above often pose real and serious problems for the spouse returning to the workforce. However, when talk comes to the issue of alimony – whether in litigated or mediated divorces – *tensions tend to run high*. One of the main reasons for this tension is that, in Massachusetts, the factors for determining whether alimony should be paid – and, if so, the amount of such payments – largely fixate on the conduct of the parties during the marriage. Under the rules governed by the *Alimony Reform Act*, divorce courts in Massachusetts look at each party's conduct during the marriage, what each party contributed to the relationship, and what each party sacrificed to make the relationship work. These are the issues that typically led to the couple's decision to separate, so resurrecting these issues tends to stir up the simmering *negative emotions* that initially led to the parties' divorce. The emotional tensions revived during

alimony discussions makes it crucial for the parties to look forward and focus on how alimony payments aim to solve future problems for the stay-at-home spouse, rather than concentrate on past wrongs and why the marriage ended.



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How Mediation Helps Resolve Alimony Issues

*When undertaken correctly, the divorce mediation process does not ignore or aggravate the emotional tensions felt by spouses during a divorce. Instead, mediation accepts that **strong emotions are part of the divorce process** and seeks to resolve and work through the emotional knots that can doom a divorce to costly and stressful litigation. In many instances, the more emotional an issue might be, the better suited that issue is for mediation. This is because litigation tends to exacerbate negative emotions, making resolution more difficult to achieve. In contrast, the mediation process acknowledges powerful emotions, while guiding spouses towards the resolution that best fits their future, not their immediate anger.*

Carmela is a divorce mediator and mediation coach for South Shore Divorce Mediation, with offices in Hingham, Massachusetts and East Sandwich, Massachusetts. She is also a Senior Associate Attorney for Lynch & Owens, P.C., where she specializes in divorce and family law issues. Carmela is a statutory mediator under [M.G.L. Ch. 233, s. 23C](#) and a proud member of the Massachusetts Council on Family Mediation. To read more from Carmela Miraglia, check out [her author page on the Lynch & Owens Blog](#). Disclaimer: The

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