

**REPORT OF THE
JOINT MBA/BBA ALIMONY TASK FORCE
ALIMONY OR SPOUSAL SUPPORT GUIDELINES
WHERE THERE ARE NO DEPENDENT CHILDREN**

I. Mission Statement

The Alimony Task Force's purpose shall be to stimulate judicial, academic and legislative discussion in order to foster consistency and predictability in alimony awards. To that end, the Alimony Task Force shall consider the various theoretical foundations of alimony and spousal support, as set forth in Massachusetts statutory and case law, accepted by the American Law Institute, or promulgated in the cases and statutes of other jurisdictions. The Task Force shall report on and recommend standards for reasonableness of amount and duration of awards, including factors for consideration by the court in alimony awards, standards for consideration in determining attribution of income and characterization of income as opposed to after-acquired assets. The Task Force shall specifically address the special tax consequences and enforcement of alimony awards to the context of same-sex divorce as a factor for the court to consider in alimony awards.

II. Preamble – In formulating an alimony award, M.G.L. c. 208 Section 34 lists a variety of factors, some of which shall and some of which may be considered. Certain decisions of the appellate courts of Massachusetts seem to limit application of each of the Legislature's designated factors for alimony consideration. These decisions leave members of the bar uncertain as to the appropriate application of the Massachusetts alimony statute. We assume that the Legislature, in its enactment of M.G.L. c. 208 Section 34, intended that alimony determinations take into consideration all required and discretionary listed factors. Otherwise, the Legislature could have bifurcated the alimony and property division statute into separate statutes with separate factors to consider.

The prevailing discussion and concern among many members of the domestic relations bar is that there seems to be a dichotomy between the limited focus of

appellate decisions related to alimony and the breadth of the statutory factors under M.G.L. c. 208 Section 34. This dichotomy prevents predictability regarding likely outcomes in alimony cases. Of major concern to the Task Force is the issue of durational alimony. The implication from Appellate decisions is that upon divorce, irrespective of the length of marriage, the fact of marriage itself may give rise to an indeterminate and indefinite obligation on the part of one spouse to support the other. This appears to be so, in the absence of specific evidence of future financial condition, notwithstanding the circumstances of the parties to the marriage, the length of the marriage or the other factors set forth in the statute. Of further concern is the restrictive impact on the judiciary in awarding alimony for a limited time when appropriate and desired out of concern that an unintended indefinite period of support must ensue and out of concern over the burden which invariably falls on the payor of ever being relieved of a support obligation once one is set. In proposing these guidelines, the Task Force seeks to encourage settlement and discourage protracted litigation in cases in which alimony is a potential component of the marital dissolution issues.

In making its recommendations below, the Alimony Task Force has considered the Massachusetts alimony statute, cases relating to that statute, and approaches to alimony in numerous other jurisdictions within the United States. The Alimony Task Force has also reviewed the Report of the American Academy of Matrimonial Lawyers on Considerations when Determining Alimony, Spousal Support and Maintenance along with the American Law Institute's Principles of Law of Family Dissolution section on Compensatory Spousal Payments.

The Alimony Task Force recommendations do not apply to circumstances where the parties have dependent children or when, but for alimony, the recipient of alimony would become a public charge. Additionally, these recommendations do not apply when the recipient of alimony has a mental or physical disability, is of an advanced age, or for compelling and related reasons lacks the ability to exercise marketable skills including those reasons related to abusive conduct of the payor spouse during the marriage.

III. Alimony classifications-The Task Force recommends that in proceedings where alimony or spousal support is to be considered, the court consider the following classifications of alimony or spousal support when entering an order:

a) General term alimony or general term spousal support is intended to compensate a spouse for economic dependence created during a marriage. This form of alimony or spousal support consists of periodic payments which terminate upon the remarriage of the supported spouse or upon the death of either spouse (except as secured in section IV) or which terminate on a date certain, with the amount of the order remaining modifiable based upon changed circumstances during the defined term. For marriages exceeding twenty years the term would be indefinite and modifiable based upon changed circumstances occurring in the future. The purpose of this form of support includes circumstances where the court finds it appropriate to order the payment of alimony or spousal support where there is a need for the ongoing support of a spouse, to be reviewed and revised as changed circumstances may indicate in the future.

i) Durational limits for general term alimony awards - In making an award of alimony or spousal support, and in particular, when the court is considering an award of general term alimony or general term spousal support, the court must first consider the duration of the marriage. The duration of the marriage shall be construed to mean the time frame between the date of the marriage and the date of the service of the Complaint or the filing of a 1A Petition. The court should have the discretion where there is a period of significant, proximate premarital cohabitation to consider that the parties' partnership is of longer duration than the length of the marriage. In considering the duration of the marriage, the task force recommends the following durational formula apply to the length of time to set a durational time for an alimony award to be paid:

Duration of the Marital Partnership	Maximum Percentage of Time
up to five years	50%
more than five years up to ten years	60%

more than ten years, up to fifteen years	70%
more than fifteen years up to twenty years	80%
more than twenty years	indefinite

For example, if the length of the marriage is ten years, the alimony award should not exceed a durational time frame of five years.

ii) **Retirement**-Notwithstanding the above, a payor's alimony or spousal support obligation for general alimony is presumed to terminate upon the payor spouse's retirement in fact from gainful employment at an age that would be considered usual retirement age for the spouse's career.

b) Rehabilitative alimony or rehabilitative spousal support is a finite sum to be paid in as few as one payment or a series of payments up to a term of five years. Rehabilitative alimony or rehabilitative spousal support terminates upon the remarriage of the supported spouse, or the death of either spouse (except as secured in subsection IV) or the occurrence of a specific event to occur in the future. Such alimony or spousal support term may be extended by a complaint for modification judgment only consistent with the purpose of this alimony classification and modified based upon unforeseen events frustrating the good faith efforts of the supported spouse to become self-supporting at the end of the term, assuming the ability of the supporting spouse to pay and the appropriateness of the extension (based upon all of the circumstances) of additional rehabilitative alimony or rehabilitative spousal support at the end of the original term. The purpose of this form of alimony or spousal support is to provide or encourage the rehabilitation of the supported spouse to enter into or return to the workplace, within the parameters of modifiable ending dates coinciding with events considered appropriate by the court such as the completion of job training or

education and the like, and to require rehabilitative efforts by the supported spouse. The evidence at trial with respect to this type of award should demonstrate a plan and time frame the rehabilitation to occur along with a specific period for the supported spouse to obtain employment or education/training for rehabilitation. In the event that the supported spouse seeks continuation of alimony beyond the durational time limit of the original order, or the supporting spouse seeks a modification during the term limit, the standard of proof to be met by the petitioning party shall be by clear and convincing evidence.

c) Reimbursement alimony or reimbursement spousal support may be awarded, if appropriate, after short term marriages (defined as to up five years). This amount is to be paid in a finite sum, to be paid in as few as one payment or a series of payments for a set duration, but the amount is not modifiable regardless of changed circumstances in the future. The purpose of this form of alimony or spousal support may include, but is not limited to, circumstances where the court finds it necessary and desirable to reimburse the supported spouse from the future earnings of the payor spouse based upon the recognition of the financial contributions of a spouse to the employment training, education or career development of the other spouse which cannot be adequately compensated for through property division or another classification of alimony or spousal support.

d) Transitional alimony or transitional spousal support is of limited duration, and usually short term, for a payment period up to a maximum of three years, where a rehabilitative alimony or rehabilitative spousal support award will not apply, but the circumstances may justify some award of financial support for a limited period of time. The payment can be in a finite total sum to be paid in as few as one payment or a series of payments over a period of time, terminating only upon the death of either spouse (unless secured in subsection IV) or remarriage of the supported spouse. This type of alimony is not terminable or modifiable based upon changed circumstances in the future.

IV. Security- In making an award of alimony or spousal support, the court may make provision for securing the payment of the alimony or spousal support in the event of the payor's death through an obligation on the estate of the payor or the maintenance of life insurance coverage. In making such an order, the court shall give due consideration to the amount and term of the alimony or spousal support, to the cost of premiums for insurance plans carried by the parties during the marriage, as well as the cost of plans which could be obtained by the payor spouse. The court shall also consider the age of the parties and insurability of the payor spouse, the probable economic condition of the supported spouse upon the death of the payor spouse, and any other factors the court deems relevant.

V. INCOME GUIDELINES (NOT APPLICABLE TO REIMBURSEMENT ALIMONY)

An alimony or spousal support order should be entered in consideration of traditional concepts of alimony in a specific dollar amount which dollar amount should not exceed 33% of the difference between the gross ordinary incomes of the parties.

Any support being paid for child support or spousal support for another relationship pursuant to a court order should reduce the payor or payee's gross ordinary income for the purposes of this Section V.

The Alimony Task Force suggests that the foregoing is not to be utilized as a "formula" for alimony but to recognize that a "cap" of alimony orders should be available.

VI. DEVIATION FACTORS

The Alimony Task Force recognizes that some cases may require deviation for the suggested term limits and income limits due to:

- a. advanced age or chronic illness or unusual health circumstances of either party
- b. due to the tax circumstances, including, but not limited to, the current lack of recognition of same sex marriage under federal law
- c. whether the payor spouse is providing health insurance and the cost thereof for the supported spouse
- d. the effects of the application of these provisions leaving the supported person in a position where, but for deviation, they would be dependent on public assistance
- e. consideration of the period of any significant, proximate marital cohabitation (which the court may take into consideration in determining the duration of the marriage).
- f. a significant portion of the income of the payor or payee is being derived from sources which do not constitute ordinary income (such as capital gains or dividends)
- g. other factors, upon written findings, that the court deems relevant