

California **ALIMONY LAWS, RULES AND CALCULATION.**

How much and
how long?

Written by B. Robert Farzad, president of Farzad Family
Law, a professional corporation



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INTRODUCTION

I wrote this EBook on California alimony laws to write an easy to understand guide about this interesting and constantly evolving area of family law. There is so much to know on this topic. Temporary alimony, modification of it, alimony at the judgment stage, Family Code 4320 factors, marital standard of living, amount and duration of alimony, post judgment modifications, termination, these are just some of the issues experienced family law attorneys deal with on a day to day basis.

This EBook assumes the reader of this book (you) are smart enough to hire an experienced California family law attorney. If you are reading this EBook with the expectation it will help you represent yourself, you are making a mistake. Do not do it. No book can replace legal advice and the value that comes from effective representation.

- B. Robert Farzad
*President of Farzad Family Law,
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K KNOWLEDGE

E EMPOWERS

Y YOU



An Introduction to California Alimony Laws

1



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CHAPTER 1

An Introduction to California Alimony Laws

Long term marriages of 10 years or more or short ones, middle class income or the wealthiest, California alimony laws affect each spouse's decisions on how they will handle their case. Our alimony laws also affect the divorce's length and complexity, settlements and, in contested cases, can become one of the most complex aspects of a California divorce trial.

Alimony can also become a heated issue. The higher earning spouses do not like paying it. The lower earning spouses, such as stay at home parents going through a divorce, insist on receiving it. Unless the spouses can reach an agreement, the issue of how much should one spouse pay in alimony and for how long can result in court battles.

That is why California's alimony laws, including calculating, modifying, or terminating alimony, can feel like an unsolvable puzzle. The good news is this EBook helps put the pieces together.

In this comprehensive EBook, we will discuss:

- How California alimony is calculated on a temporary and long-term basis
- How California alimony laws allow upward or downward modification
- How alimony in California is terminated in long-term and short-term marriages
- We will also give you tips and insight on how we have seen California alimony laws applied in certain kinds of divorce and post judgment cases.

Alimony is synonymous with the word "spousal support," which is the word used in the California Family Code. We will also use the term spousal support or just "support" from time to time in this page.

Our alimony laws also affect the divorce's length and complexity, settlements and, in contested cases, can become one of the most complex aspects of a California divorce trial.



California alimony laws allow orders to go back as far as the filing of the petition for divorce or legal separation

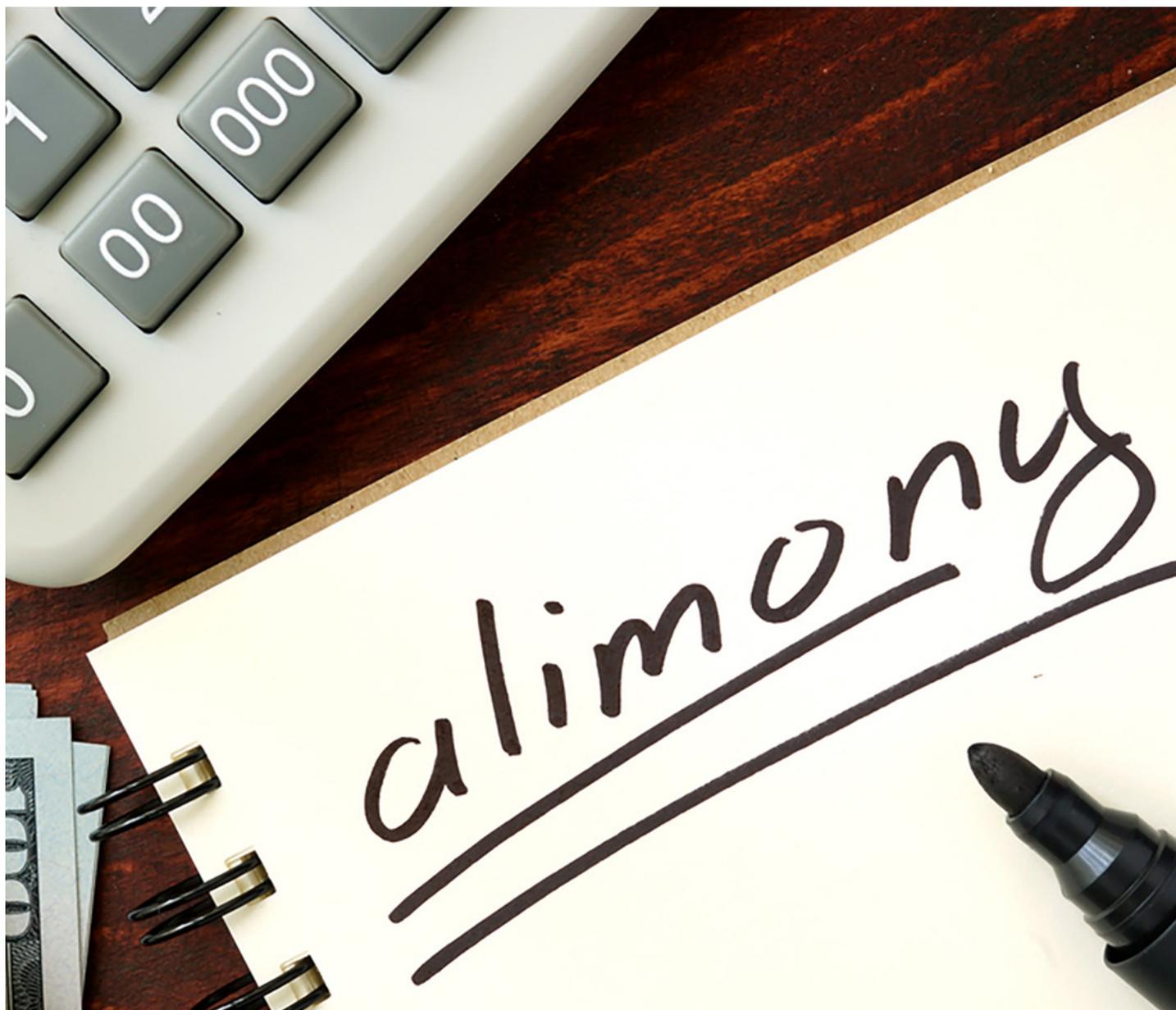
CALIFORNIA ALIMONY LAWS EMPOWER THE COURT TO ORDER SUPPORT IN A PENDING DIVORCE

California alimony law states in a pending divorce or legal separation case, the Family Court has the power to order either spouse to pay support to the other. The amount of the support is in the amount that is necessary for the support of the other spouse.

CALIFORNIA ALIMONY LAWS ALLOW RETROACTIVE ORDERS THAT GO BACK IN TIME

A retroactive order is one that goes backward in time and starts from that prior date. For example, if the Court enters a California alimony order on December 1, 2017, and the support order states the support is retroactive to August 1, 2017, August 1, 2017 becomes the date that the alimony starts even though the court made to order in December.

California alimony laws allow orders to go back as far as the filing of the petition for divorce or legal separation, although spouses often dispute this issue and there are legal arguments that it cannot go that far back. Under certain circumstances, a party can also seek alimony in an annulment case although those are unique. Most of the time, the retroactive date is the date the spouse filed the request for order that sought alimony.



Temporary Alimony Orders

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CHAPTER 2

Temporary Alimony Orders

Before a final judgment, California alimony laws give the court the power to order temporary alimony based on a spouse's need and the other spouse's ability to pay.

Contrary to what many family law lawyers will tell you, the court can consider Family Code 4320 when evaluating a temporary alimony order. Family Code 3600 states:

“During the pendency of any proceeding for dissolution of marriage or for legal separation of the parties or under Division 8 (commencing with Section 3000) (custody of children) or in any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 3901 or 3910, the court may order (a) either spouse to pay any amount that is necessary for the support of the other spouse, consistent with the requirements of subdivisions (i) and (m) of Section 4320 and Section 4325, or (b) either or both parents to pay any amount necessary for the support of the child, as the case may be.”

Family Code 4320(i) and (m) deal with domestic violence issues that, when they collide with alimony, can make the case more complex.

We will discuss **Family Code 4320** later in this EBook.

THE SAME COMPUTER PROGRAM USED TO CALCULATE CHILD SUPPORT GENERALLY DETERMINES TEMPORARY ALIMONY IN CALIFORNIA

The computer formula to which we refer is the same computer program used to calculate guideline child support in California. Whether the Court uses the program Dissomaster or X-spouse (or any number of others), the Court inputs the same parameters as it would enter for child support, including income, tax filing status, exemptions, certain allowed deductions.

The program determines what the net disposable income is and what alimony should be on a temporary basis. The program is not used for long-term alimony (the order made at trial or post judgment) in California. California alimony laws forbid that.



THE AMOUNT OF CHILD SUPPORT AFFECTS THE ALIMONY CALCULATION

If the spouses have children, the court likely makes this alimony calculation alongside the child support calculation. Thus, the amount of the alimony is dependent, in part, on the amount of child support ordered. This means if the child support ends, alimony may increase.

WHEN CALCULATING INCOME FOR TEMPORARY ALIMONY IN CALIFORNIA, THE LAST TWELVE MONTHS IS AN APPROPRIATE BENCHMARK IN MOST CASES

When the court calculates income to determine temporary alimony, the court will typically go back approximately 12 months. That time period is typically a fair and representative of income, especially when income fluctuates. There are no hard and fast rules. The Court can go longer especially if a spouse is self-employed. For the Court to go shorter would be unusual but it is possible depending on the case's specific facts. This is especially true when the payor has a new job and income in the past 12 months is not consistent with prospective income.

WHAT IS THE PURPOSE OF TEMPORARY ALIMONY?

In a lavish lifestyle versus a frugal one, it can be very different and California alimony laws do not treat every marriage and factual situation with a cookie cutter approach.

California alimony laws state the fundamental purpose of temporary alimony is to maintain the status quo. This is a catch 22 for most spouses. Some families live on debt, borrow from savings, and spend \$1.10 of every dollar they make.

How is the court to determine status quo and order temporary alimony in such a situation? It is not easy. In fact, these are some of the hardest cases to litigate and resolve because the spouse requesting support will expect to continue to live at that same level. Meanwhile, the other spouse may protest there is no way he or she can maintain that level and still be able to pay for his or her own reasonable lifestyle.

In such situations, the court will typically look at each spouse's net disposable income. The court will then determine how much "waste" there is within the monthly expenses that the spouses pay or claim they need to pay. It may happen that the alimony order will not provide for all the financial needs of the requesting spouse. Every factual situation is going to have its own unique characteristics and the advice of an experienced lawyer in such complex alimony cases is an important part of the process.



IS THE COMPUTER PROGRAM THE FINAL WORD ON TEMPORARY ALIMONY IN CALIFORNIA?

No. The computer program to which we refer is not the be-all and end-all of the temporary alimony calculation in California. The court has discretion to depart from the program in situations where a requesting spouse's need is higher or the paying spouse's ability to pay is materially less or more than what the computer program calculates.

In addition, if there are circumstances where there are unusually high expenses or tax consequences, the court can adjust numbers.

The court does have discretion when determining temporary alimony. However, spouses should not expect the court to divert from the computer formula in temporary alimony situations unless there is evidence of a persuasive need to depart from it.

HOW DOES A PAYING SPOUSE ACTUALLY PAY TEMPORARY ALIMONY?

The court usually orders temporary alimony paid by the payor directly to the payee. The court order will typically state it shall be paid one-half on the first and one-half on the 15th of each month. The duration of the alimony is generally until there is a final judgment or any other date that the court sets. Most of the time, it is an open ended order until death of either party, remarriage of the payee or further order of the court.

WHAT ABOUT SITUATIONS WHERE THE PAYOR SPOUSE IS SELF-EMPLOYED AND THE COURT HAS NOT DETERMINED THE FINAL INCOME NUMBERS FOR ALIMONY PURPOSES?

In cases where the payor is self-employed, it is common for the court to set a temporary alimony amount that is without prejudice to either spouse (which means the Family Court's decision is not conclusive and is subject to change) and subject to retroactive modification later on as the Court gathers more information.

However, there are two cases in our appellate courts called *Marriage of Gruen* and *Marriage of Freitas* that have complicated such orders. A full discussion of *Gruen* and *Freitas* and the appellate decisions that have followed them is beyond the scope of this EBook. For now, know such orders that are "temporary" but with a reservation to make a retroactive modification are complex and should not be handled in Court without the



help of a family law attorney. Under certain circumstances, the court may not be able to enforce them retroactively. These two cases are a good example of how California alimony laws evolve and can change and why no EBook will apply to your specific situation. That is also why the one on one advice of an experienced family law attorney is important.

DO CALIFORNIA ALIMONY LAWS ALLOW MODIFICATION TO A TEMPORARY ALIMONY ORDER BEFORE JUDGMENT?

Yes. Technically, the one requesting the alimony modification does not even need to show that there has been any change of circumstances. However, from a practical perspective, courts do not like to make modifications of temporary alimony unless there is a good reason for it. Simply walking back in the court and stating, “I want more money from my spouse” or “my spouse should be paid less,” without showing why there is an additional need, additional ability to pay or less of either may fall on deaf ears.



Alimony at the Judgment Phase

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CHAPTER 3

Alimony at the Judgment Phase



California
Family Code
Section 4320

Unless the alimony order terms make alimony unmodifiable by the agreement of the spouses and it is set to continue forever or until the death of the payor spouse, nothing is permanent and an alimony order might not become long-term.

Most alimony orders at the trial and judgment phase will continue for one-half the duration of the marriage in short-term marriages or until the death of either spouse, remarriage of the spouse receiving support or further order of the court, whichever occurs first. The court has the discretion to order it for less or more time in less than 10-year marriages. The further order of the court language is what makes alimony modifiable in California in the future so long as there is a showing of a material change of circumstances.

WHAT IS THE DIFFERENCE BETWEEN HOW A COURT CALCULATES TEMPORARY ALIMONY VERSUS ALIMONY AT THE JUDGMENT PHASE IN CALIFORNIA?

The biggest difference between an alimony order at the judgment phase versus a temporary one is the court will not use and cannot use the computer program to determine the amount. Family Code 4320 controls alimony orders at the time of judgment. Family Code 4320 is the code section that goes through the determination of the standard living that was established during the marriage.

Family Code 4320 sets forth many factors. Most of the factors are common sense. Some of them require a deeper analysis. The ultimate goal is to reach a reasonable alimony order, if the Court will award alimony at all, based on the complete set of circumstances. We go through the Family Code 4320 factors below but first, let us discuss some special challenges the Court may face when evaluating Family Code 4320.



SPECIAL CHALLENGES TO THE COURT WHEN CONDUCTING A MARITAL STANDARD OF LIVING ANALYSIS

Frugal Lifestyles

The court has significant challenges in certain types of cases. In situations where the spouses lived an unusually frugal lifestyle for their income, the court's challenge is to determine whether or not the marital lifestyle will be consistent with the same level of frugality.

If the spouses lived an unusually frugal lifestyle and therefore accumulated savings or other investments, the court can set alimony consistent with that modest lifestyle to allow for savings.

Lifestyles beyond the financial means

In situations where the spouses lived well beyond their means, how is the court supposed to determine the marital lifestyle? Will the court look at liquidating assets or putting the payor spouse into further debt to maintain that lifestyle?

The court will typically look at the spouse's income rather than what they spent. After all, spending beyond the means typically makes spending a poor indicator of lifestyle.

The workaholic spouse that established an unbalanced lifestyle

In situations where one spouse worked very long hours and not consistent with what could be maintained in the end, the court has the discretion order alimony based on hours worked at a reasonable pace.

Taking care when presenting evidence

Both the payor spouse and the payee spouse should be careful how they approach such cases because if they do not provide the court with the complete picture and evidence, one of the spouses may leave the courtroom very unhappy. Once again, a skilled California divorce lawyer helps in such situations.

The time period considered for long-term marriages

The marital standard living and lifestyle can be difficult to determine in long-term marriages. For example, when spouses are married for over 20 years, what portion of that marriage does the Family Court take into consideration when determining lifestyle? Is it the entire 20 year time period? How would that work with a significant increase, significant decrease, or wild fluctuations in the spouses' lifestyle?



Does the court only look at the good times?

Typically, the court will look at the last five years of a long-term marriage as indicative of the marital lifestyle although that amount of time can vary depending on the case. That stops at the date of separation when there was a final and irremediable breakdown in the marital relationship.

Still though, that five-year mark is not a rule. Family law judges have broad discretion and may go back as long as they believe appropriate. Much depends on the consistency of the lifestyle in determining how far back the court will go. California alimony laws do not handcuff a judge. All the judge needs to do is use reasonable discretion.

Post separation income and impact on marital lifestyle and alimony in California

The court will generally not take post separation income into consideration when determining the marital lifestyle. That is because the marital lifestyle has to be based on the marriage so that if one spouse earns significantly more post separation because of a change of circumstances that is really not related to the marriage, that additional income may not be taken into consideration when determining the lifestyle.

A supported spouse however should look at whether or not that increase in income related directly or indirectly to efforts made during the marriage. That may give the supported spouse an argument that the additional income received post separation is consistent with the sacrifices made during the marriage.

Now, let us look at Family Code 4320 and how the Family Court may consider each factor in determining the final alimony number.



Family Code 4320 Factors One Through Four

4



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CHAPTER 4

Family Code 4320 Factors One Through Four

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER ONE:

The extent to which each party's earning capacity will maintain the standard living that was established during the marriage.

With such a factor, the court must take into account what might be required for the supported party to develop or acquire marketable skills and the extent to which his or her earning capacity is or will be impaired by any periods of unemployment during the marriage and time devoted to domestic duties. This factor is especially important for divorcing stay at home moms or dads.

The shorter the marriage, the shorter the alimony in California and the shorter amount of time a spouse will have to become self-supporting. The longer the marriage and the longer that a spouse has been out of the workforce, the longer the alimony, and the more leniency the family court may give regarding the inability to get back into the workforce.

It is common in California alimony cases for the spouse paying support to argue that the supported spouse is not making reasonable efforts to be employed. In such a situation, the burden of proof is on the supporting spouse to show that there is an earning capacity, ability, and opportunity for the other spouse to become gainfully employed. Some spouses however make this easy to show when they make little to no efforts to become self-supporting or at least contributing to their own support.

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER 2:

The extent to which the supported party contributed to the supporting party's attainment of an education training, a career position, or a license.

If one spouse made contributions to help the other spouse acquire education and that in turn increased the earnings of the other spouse, the court must take that into consideration.

This often occurs when you have a homemaker whose primary duty is to take care of the children while the other spouse obtains an education and a career that, over time, increases his or her earnings.



It would be unfair, pursuant to Family Code 4320, if the spouse who acquired the education and the earnings to, post separation, not give back to the other spouse for the sacrifices made during the marriage.

That is why the second factor exists – to balance the equities. Under certain circumstances, the court can even order reimbursement for contributions to education or training under Family Code section 2641.

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER THREE:

The supporting spouse's ability to pay, taking into account his or her earning capacity, earned and unearned income, assets and standard of living.

W-2 Employees

For a W-2 employee who has no other source of income, his or her income should be easy to calculate. We simply look at the year-to-date pay stubs and tax returns to determine what the income is.

While it is possible that a W-2 employee may have certain undisclosed income through that employment, that is typically the exception and not the rule.

Self-employed spouses

However, for self-employed spouses in a divorce, this becomes more complicated because a family law attorney will generally want to conduct a controllable cash flow analysis for alimony purposes. That term “controllable cash flow” is not a legal one, but rather one commonly used by forensic accountants when determining income for support purposes.

Calculation of income for alimony purposes

There is no specific formula used when determining how much of a spouse's income should be used for alimony purposes. The court does have discretion here although the Family Court will typically look at tax returns as a good starting point.

Actual earned income is not the only consideration.

Just as this factor states, earning capacity is also relevant. Think of earning capacity in this way – if a spouse is willfully underemployed or unemployed when he or she could be earning more money, the court has the power to impute income based on that spouse's earning capacity.



This is not something done without evidence that is persuasive on the issue of the spouse's unwillingness to work while having the opportunity and ability to do so. The Family Court will typically not look at an unusual or extraordinary work schedules in determining a spouse's earning capacity. No spouse is obligated to work unreasonable hours to pay support.

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER FOUR:

Each spouse's needs, based on the standard living established during the marriage.

Notice the Family Code specifically correlated "need" based on the standard living. That means post separation circumstances will not necessarily affect a spouse's need but rather what existed at the time of the marriage.

A spouse's needs have to be reasonable. A lifestyle well in excess of earnings will generally not justify that higher alimony award in California, as we have discussed above.

The amount of money the spouses spent during the marriage is a good indication of need. If the spouses had a mortgage payment, two cars, and lived a middle-class lifestyle, chances are good the alimony award will be consistent with that lifestyle. Of course, everyone knows that maintaining two households is more expensive than one so the Family Court may make adjustments to the alimony award with that in mind.



Family Code 4320 Factors Five Through Eight

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CHAPTER 5

Family Code 4320 Factors Five Through Eight

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER FIVE:

Each spouse's assets and obligations.

These assets include community property, separate property or assets that are a combination of each.

The reason assets are important is they give an indication of each spouse's net worth. Also, a spouse need not own an asset for the court to take it into consideration. Just as Rockefeller said, own nothing and control everything. The court has the discretion to base an alimony award, in part, on assets that a spouse controls. Whether or not each spouses' assets is a major factor in determining alimony depends, in part, on what happens with those assets during the divorce

If all of the assets are community property and divided equally, the court will have a difficult time justifying a disproportionate alimony order based on the assets awarded because there was an equal award, placing the spouses in parity to each another.

In short, the assets affect both need and ability to pay and can affect alimony in California upward, downward or not at all.

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER SIX:

The duration of the marriage.

The duration of the marriage is one of the most important factors when determining the duration of the alimony. Contrary to popular belief, there is no set rule that a marriage of 10 years or more means an automatic lifetime alimony order any more than a marriage of less than 10 years automatically means the alimony is only for one-half the duration.

For example, in marriages that are 10 years or more, the court may determine that the supported spouse has the ability to become self-supporting and cut alimony at the halfway duration of the marriage. The closer to the ten-year mark, the more likely the court will at some point cut off the support. The longer the parties are married, the less likely a prospective order will terminate that alimony.



The days that a 10-year marriage meant a lifetime obligation of alimony are in the past although the court certainly still has the discretion to order ongoing alimony without a predetermined termination date in marriages that are at or close to the 10-year mark. Once again, every fact pattern is going to be different and the Court must consider all of the Family Code 4320 factors, not just the duration of the marriage.

CALIFORNIA ALIMONY FACTOR NUMBER SEVEN:

The supported spouse's ability to engage in gainful employment without interfering with the interests of dependent children in his or her custody.

Think of it as a balancing test. On the one hand, the court wants self-supporting and gainfully employed spouses. On the other hand, the Family Court recognizes the children cannot be an unreasonable sacrifice of that goal.

For that reason, this factor exists. If the children are very young and are highly dependent on the custodial parent, the more lenient the court will be regarding the custodial parent's earning capacity and inability to gain full-time employment.

The older the children get, especially when they start attending school, the less swayed the California Family Court judge is going to be regarding this particular factor.

Of course, the Family Court should treat children with special needs or handicaps very differently under this factor, because of the increased time required to attend to them.

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER EIGHT:

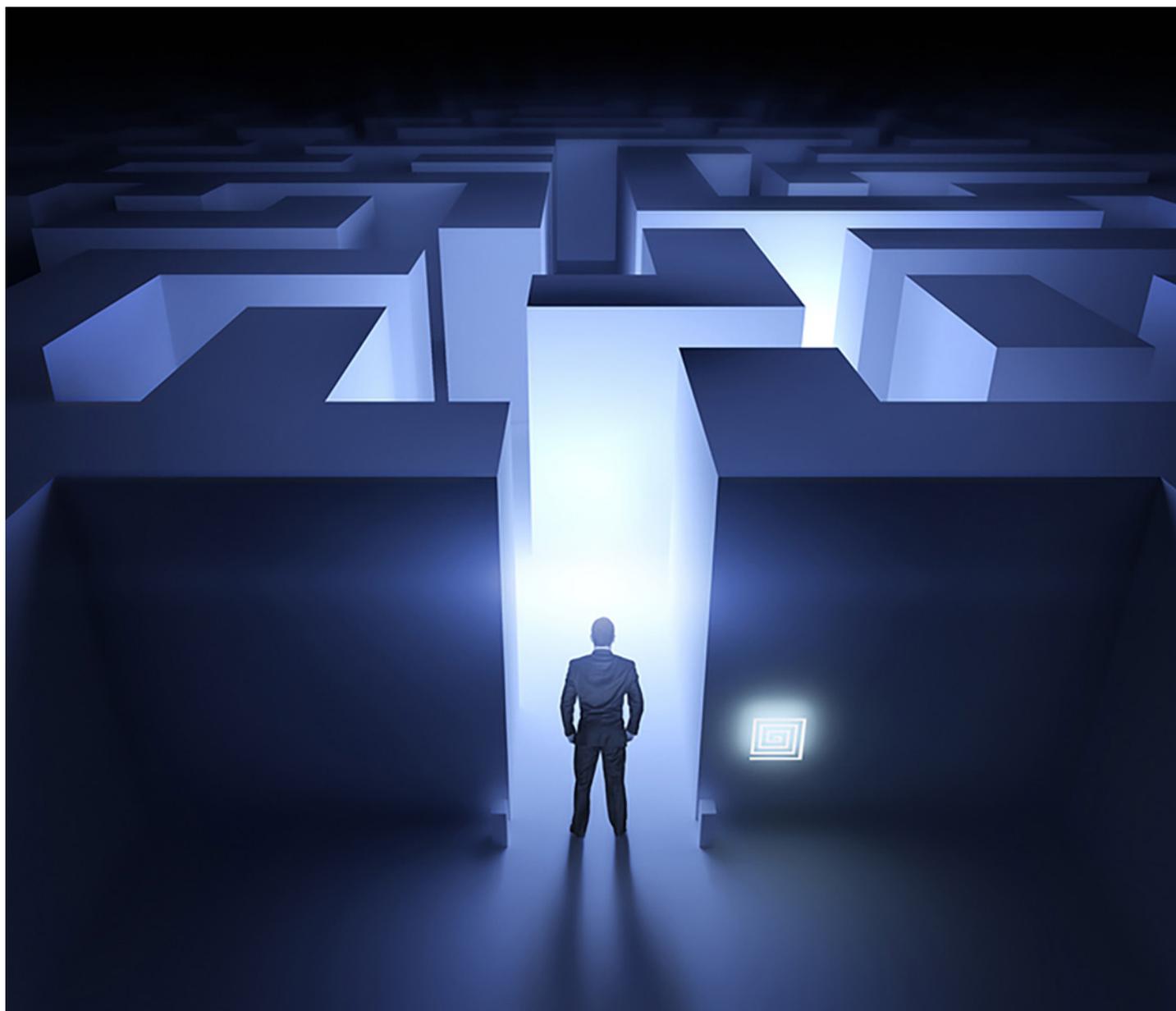
Each spouse's age and health.

If both spouses are healthy, the court will not look to make any special orders that lower or raise alimony or affect its duration.

However, if one of the spouses is in poor health, or is older and has a lesser ability to work, the court can certainly take all of those factors into consideration.

The Family Court should treat a 40-year-old healthy spouse differently than a 68-year-old unhealthy spouse, as a result of both age and physical capacity.

Health is not limited to physical abilities. A spouse's psychological conditions may also be a factor.



Family Code 4320 Factors Nine Through Fourteen

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CHAPTER 6

Family Code 4320 Factors Nine Through Fourteen

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER NINE:

Documented evidence of any history of domestic violence between the spouses or perpetrated by either spouse against either spouse's child, including emotional distress that has resulted from the domestic violence.

This is a self-explanatory. If there has been a history of documented domestic violence between the spouses, the court must take it into consideration when evaluating alimony.

For the courts to consider domestic violence does not require the perpetrator of domestic violence be convicted or even have a restraining order issued against him or her.

Courts do not like awarding alimony to perpetrators of domestic violence, regardless of the gender. The court has the discretion to lower the alimony to a perpetrator of domestic violence even if the victim of the alimony is the higher earner. Similarly, the court may make an upward adjustment of alimony or extend the duration of it for victims of domestic violence.

It is a shame the code does not recognize a finding of false allegations of domestic violence in a divorce as a factor. It should be.

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER 10:

The immediate and specific tax consequences to each spouse.

This is another self-explanatory factor whereby the court has the discretion to take into consideration what tax impact the alimony order will have. Alimony has historically been deductible by the payor spouse and taxable to the payee spouse. However, commencing in 2018, the new federal tax laws make modifications to these rules under certain circumstances. As we write this EBook, the law is not final so we do not know what impact it may have. Such a discussion is, at this time, beyond the scope of this EBook.



CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER 11:

The balance of hardships to each party.

This factor gives the court discretion to look at hardships to both the supported spouse as well as the supporting spouse by virtue of the alimony order. This is a catchall factor that the Family Court can take into consideration when the previous 10 factors do not specifically address the hardship issue.

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER 12:

The goal that the supported party be self-supporting within a reasonable time.

The court will take into consideration the goal to become self-supporting for the supported spouse. While once again it is not a hard and fast rule, in short term marriages, a reasonable period is generally considered to be one-half the length of the marriage.

Do not assume a marriage of 10 years or more does not have the same self-supporting goal. It does. The Family Code just does not spell it out as clearly.

Gavron Warning in California alimony cases

The court has the discretion to make a [Gavron warning](#) or admonishment to a supported spouse that advises the supported spouse that he or she should make reasonable efforts to assist in providing for his or her own needs. This warning puts the supported spouse on notice that he or she needs to become self-supporting within that reasonable period and the spouse who refuses to become self-supporting could face a reduction or termination of his or her alimony.

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER 13:

The criminal conviction of an abusive spouse when the court is reducing or eliminating an alimony award under California Family Code 4325.

[California spousal support and domestic violence](#) sometimes collide in the same case.

California Family Code 4325 states that there is a rebuttable presumption that when there has been a criminal conviction for domestic violence by one spouse against the other spouse within five years before or any time after the filing of the divorce petition, the Family Court should not make an alimony award to be a spouse who committed the abuse.



Read more
on Gavron
Warning



This presumption is rebuttable, which means it is not conclusive. The abusive spouse can rebut the presumption by several ways including showing that he or she was also a victim of domestic violence by the other spouse. Such an argument would essentially attempt to cancel out the “perpetrator v. victim” stigma and make it appear as if it was mutual than one-sided.

CALIFORNIA FAMILY CODE 4320 FACTOR NUMBER 14:

Any other factors that the family court deems to be just and equitable.

Talk about broad! This gives the court a lot of discretion to take into consideration anything else that it believes is reasonably necessary when making an alimony award in California. These include but are not limited to the following:

1. The support of adult children
2. The support of others including grandparents, family, or new relationships.
3. Disabilities of children that require a greater support.
4. Any other factor that the court believes would have an impact on ability to pay, need or the marital lifestyle of the parties.



EXPECTATIONS

Long Term Marriages and Retention of Jurisdiction

7



7

CHAPTER 7

Long Term Marriages and Retention of Jurisdiction

California Family Code 4336 (a) through (c) states:

- (a) Except on 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.
- (b) For the purpose of retaining jurisdiction, there is a presumption affecting the burden of producing evidence that a marriage of 10 years or more, from the date of marriage to the date of separation, is a marriage of long duration. However, the court may consider periods of separation during the marriage in determining whether the marriage is in fact of long duration. Nothing in this subdivision precludes a court from determining that a marriage of less than 10 years is a marriage of long duration.
- (c) Nothing in this section limits the court's discretion to terminate spousal support in later proceedings on a showing of changed circumstances."

The code is clear enough on its face. What spouses sometimes miss is the section that speaks to the spouses' power to agree to something different than the code allows.

A husband and wife are free to negotiate in a divorce settlement many variations of alimony terms and conditions. These include but are not limited to

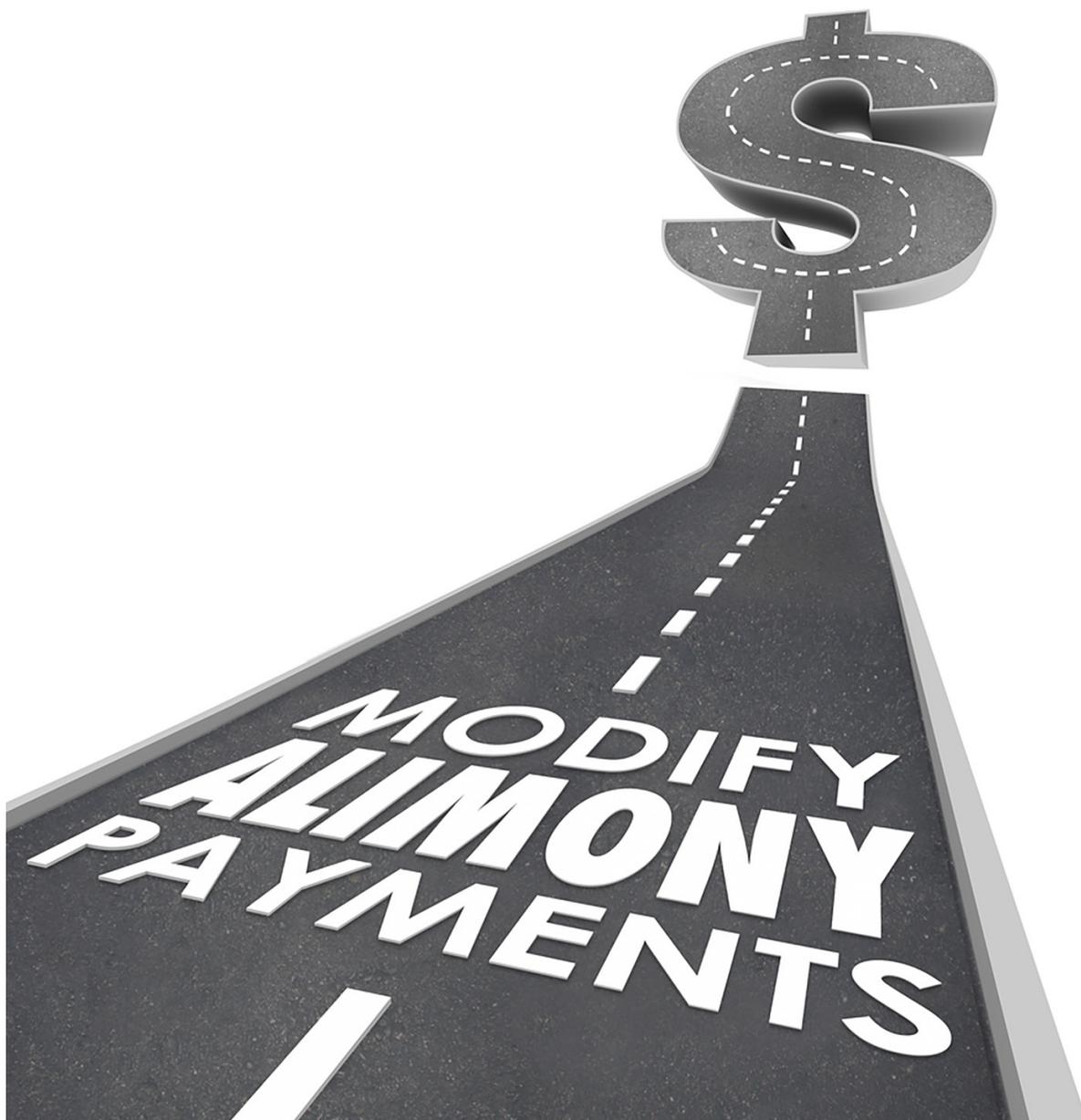
- the indefinite retention of the court's power to make orders just as the code says,
- termination of alimony on a set date which may or may not include, especially in a long-term marriage,
- termination of the court's power to ever award alimony beyond that date,
- non-modifiable alimony in various forms including non-modifiability for a certain period, the entire time as well as a step down or step up of alimony over time.



These numerous variations must be explicit in the alimony agreement and it is strongly recommended that you have a skilled divorce lawyer draft such agreements and do not try to come up with language on your own.

Alimony orders and agreements are highly litigated and disputed

Over the years, the issue of the court's power regarding alimony and the interpretation of a husband and wife's agreement and what they really intended versus what they really said has been the subject of a lot of litigation. Many times, careless drafting caused this litigation or, even when the language appeared sufficient, the law's evolution regarding interpretation of certain language did so.



Modification of Alimony Orders

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CHAPTER 8

Modification of Alimony Orders

HOW DOES THE COURT APPOINT A LAWYER FOR THE CHILDREN?

To modify a California alimony order, the requesting spouse must show a material change of circumstances since the most recent order.

The circumstances to which we refer are the same ones that Family Code 4320 sets forth and which we discussed, above.

Notice the use of the term “material.” It is not enough to show any change. The change has to be significant enough to justify a modification.

Rushing to court just because there has been slight adjustments in income upward or downward or slight adjustments in the standard living will generally cost you a lot of money in attorney fees, only to lose the modification proceeding. An experienced family law attorney can tell you what “material” is or is not.

THE MATERIAL CHANGE OF CIRCUMSTANCES MUST HAVE OCCURRED AFTER THE MOST RECENT ALIMONY ORDER

The material change of circumstances must occur since the most order the person seeks to modify. In addition, the fact that a spouse can show that a change of circumstances has occurred does not guarantee that the spouse will obtain the modification. The court still has to look at the needs and ability to pay of each spouse as well as all of the Family Code 4320 factors.

THE MATERIAL CHANGE OF CIRCUMSTANCES MUST NOT HAVE BEEN ANTICIPATED

The material change of circumstances should also not be something that was anticipated by the court order. For example, if the Family Court based the alimony order on the supported spouse earning a certain sum of income and the support was adjusted in the order based on an imputation of that income, when the supported spouse gets a job and makes at or about that income, the supporting spouse would have a difficult time seeking a modification.

That is because the court order already imputed a certain sum of money to the supported spouse and the fact that he or she is now actually receiving that money through employment (as opposed to imputation) is not really a change that has occurred.



A careful reading of the order and an understanding of the circumstances that existed at the time it was entered, especially those that both of the spouses knew and recited in the order, should be carefully reviewed before any modification proceeding is filed.

CAN A FAILURE OF A STATED ASSUMPTION BE A MATERIAL CHANGE OF CIRCUMSTANCES AND JUSTIFY A MODIFICATION OF A CALIFORNIA ALIMONY ORDER?

A fascinating situation is when there is a failure of an assumption that takes place upon which an alimony order was made. The most interesting case on this point is one called Marriage of Jacobs.

In that case, there was a long-term support order and the order reduced the support to one dollar per year. But the order based the reduction on the supported spouse's psychiatric problems being alleviated by that time so that she could become reasonably self-supporting.

One California Court of Appeal held that the failure of that assumption occurring constituted a change of circumstances that justified the modification of the support order and for the support to continue.

What this case teaches is that a material change of circumstances does not always have to be an act or event but can be, under certain situations, the failure of an assumption to take place.

It would be unusual for a failure of an assumption to be grounds as a material change of circumstance unless the court order actually spells it out.

One situation that this could occur may be a supported spouse's failure to make good faith efforts to become self-supporting. Those cases are usually factually complex and can cut both ways. For example, a supported spouse may fail to comply with the court order to make reasonable efforts to become self-supporting. This may result in a reduction of support. As another example, a supported spouse may make good-faith efforts to become self-supporting but ultimately be unable to become self-supporting for reasons beyond his or her reasonable control. The latter could result in an ongoing support order or a modification in favor of the supported spouse.



WHAT HAPPENS IF THE SUPPORTING SPOUSE HAS INCREASED HIS OR HER INCOME?

The question we sometimes get is what happens when the spouse paying support has received an increase in income? Can the other spouse seek an upward modification of support as a result?

The answer is yes but the situation is a unique one in that the court should have to find that the amount of the support in the order was not adequate to meet the supported spouse's reasonable needs pursuant to Family Code 4320 at the time the Court issued the alimony order.

In other words, the court would have to find that the support order was less than what the spouse needed when taking the marital standard living into consideration.

This often happens when the supporting spouse did not make sufficient money post separation to meet the marital standard living when compared to his or her income during the marriage, the latter of which established the marital standard living.

If that cannot be shown, an increase in pay can still act as a material change of circumstances if it can be shown that the amount required to meet the supported spouse's needs has increased since the court order due to a change of circumstances. This could include many things but the most common ones are a change in health, inflation, and cost of living or other relevant circumstances beyond the supported spouse's control.

RETROACTIVITY OF ALIMONY IN CALIFORNIA UPON MODIFICATION

Retroactivity of support in a modification proceeding typically goes back to the date of filing of the request to modify or terminate. However, when the modification of alimony request is made as a result of either spouse's unemployment, the court must make the retroactive modification to the later of the date of service of the request for modification or the date of unemployment. The exception is if the court finds good cause not to make the order retroactive and states on the record the reasons for that good cause.

This must be more than a conclusion but rather the factual reasons the court refused to make the order retroactive.

Retroactive orders of alimony could lead to reimbursements if the court modifies support downward.



A retroactive order may entitle the spouse paying support to seek reimbursement for the excess amounts the supporting spouse paid during the retroactive period of time. For example, if the court lowers support from \$5000 to \$3000 and makes that order retroactive back three months, the court may order the supported spouse to reimburse the supporting spouse \$6000 for the retroactive modification.

This repayment does not have to all at once. The court has discretion here and can set a payment plan over time or even offset it toward future support payments.

Family law courts are not just a court of law but they are also a court of equity. Family law judges try not to make orders that become draconian in their nature and typically will be flexible with anything that involves a repayment by one spouse to the other especially when dealing with retroactive modifications.

THE COURT CAN RETROACTIVELY MODIFY ALIMONY UPWARD

It cuts both ways. If there is a retroactive modification, alimony can go up under certain circumstances we discuss later. If that happens, the supporting spouse could owe support, back in time, to the retroactive date.

THE MARITAL LIFESTYLE IS THE BENCHMARK FOR ALIMONY IN CALIFORNIA

The reason these rules exist is that the marital lifestyle is the ultimate benchmark for the amount of support and which will dictate a ceiling of sorts for the support.

If the alimony order was consistent with Family Code 4320 and the marital standard of living, a supported spouse will generally not receive an increase in support just because the supporting spouse has an increase in pay. That is because the goal of Family Code 4320 is to maintain the marital standard living and not the post separation standard of living.



Reduction of Alimony Flowchart

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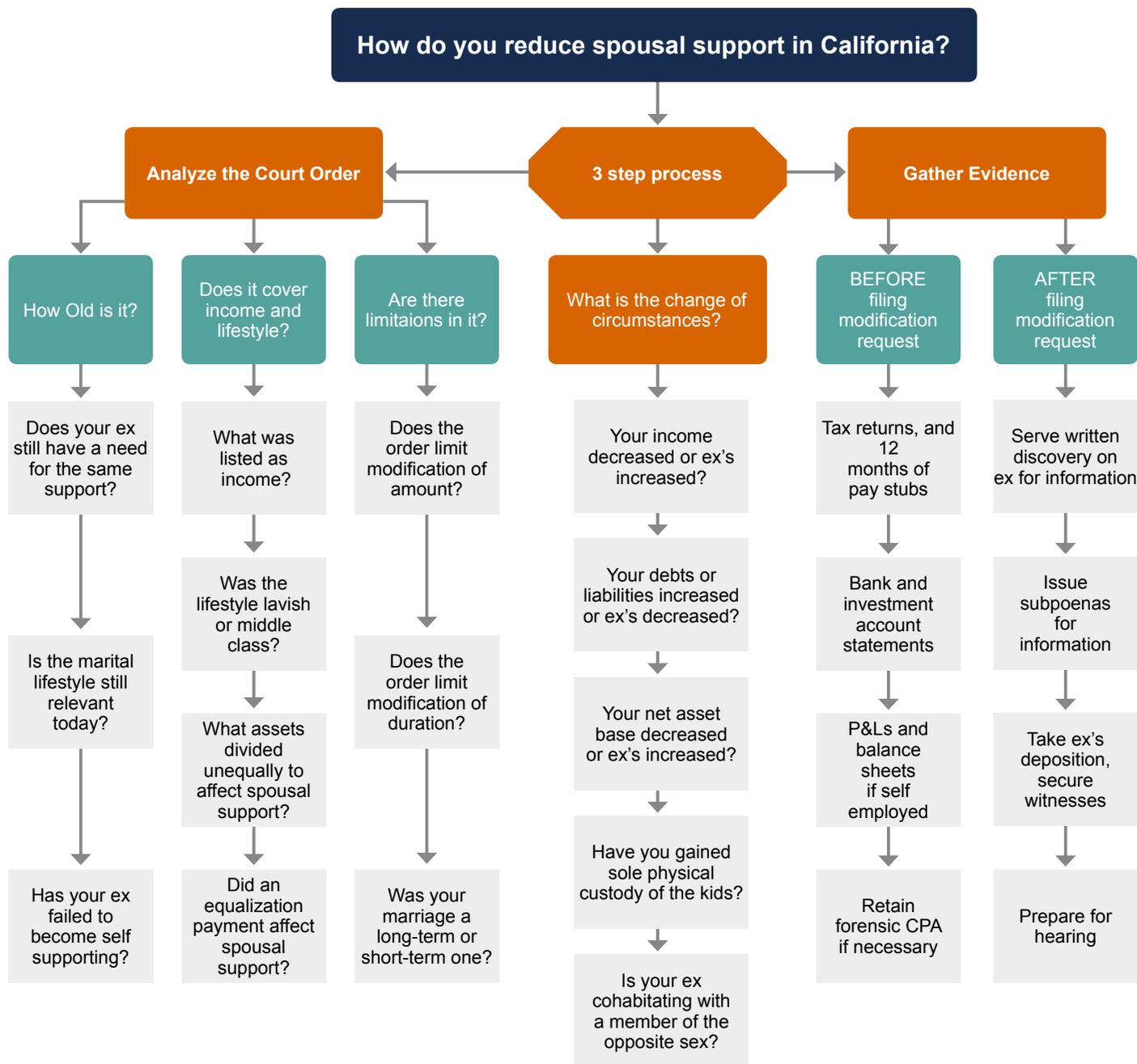


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CHAPTER 9

Reduction of Alimony Flowchart

We have also created a flow chart about reducing alimony in California that will help you visualize the process.



Flow chart by Farzad Family Law, APC. You may share this with others but please do not take credit for our work and do not alter it. Flow chart is the intellectual property of Farzad Family Law, APC, 1851 East 1st Street, Suite 460, Santa Ana, California 92705. The chart is for general reading only, intended for California residents and is not intended as legal advice. Do not rely on it for any particular set of facts or case. You can learn more about our family law firm at farzadlaw.com.



HELLO
I AM...

FOREVER PAYING
ALIMONY!

**Termination of Alimony
in California**

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CHAPTER 10

Termination of Alimony in California

Termination of alimony is also a common request after a divorce judgment.

In short-term marriages, the termination of alimony is simple because the date is generally one-half the duration of the marriage. The shorter the marriage, the more likely the one-half duration will act as a termination. The alimony agreement should be explicit about what that date is and have clear and specific language that states alimony shall terminate on that date.

In long-term marriages, the court will generally not terminate its power to award alimony. However, the court does have the power to order alimony to be set at zero after a certain duration of time, especially in marriages that are very close and just over the ten-year mark or those where the supported spouse no longer has a need for alimony or has failed to make reasonable efforts to become self-supporting.

THE FAMILY COURT RETAINS ITS POWER TO TERMINATE ALIMONY IN LONG-TERM MARRIAGES

Just because a marriage is of a long duration and even if it is much longer than the 10 year mark does not mean the court loses all power to terminate alimony.

The court retains its power and has the ability to terminate alimony in longer marriages if there is persuasive evidence that the supported spouse can sustain the marital lifestyle and standard living on his or her own. Another way to understand this concept is that the court must clearly find that the supported spouse will adequately meet his or her financial needs without the necessity of additional alimony from the other spouse. Generally, a spouse must show the supported spouse has gained income, typically through employment, that allows him or her to provide for his or her needs. The nature and extent of the employment is a factor in the court's consideration and is not limited to just the income.

The court can also terminate alimony if the supported spouse failed to make reasonable efforts to become self-supporting and had the capacity, opportunity, and ability to do so.

In addition, depending on the amount of alimony, obtaining a separate estate may be grounds for termination of alimony even in a long-term marriage. This could include an inheritance as one common example.



The court would have to look at how and why that separate state would help the supported spouse meet his or her financial needs.

Termination of alimony typically does not occur simply because the supporting spouse has lost his or her employment or had a reduction in income. Generally, that results in a modification of alimony. However, if the income status and other Family Code 4320 factors show that the supporting spouse has had a significant change of circumstances downward in his or her income and the supported spouse has had a significant change circumstances upward, the court may rethink the entire alimony obligation going forward.

The Family Court has a lot of discretion when determining alimony in California.

These issues are well within the discretion of the Family Court and there are no set rules that mandate the Court do one thing versus another. It all comes down to a balancing of the many factors the court will take into consideration including the supported spouse's good faith efforts to become self-supporting or the failure to do so.



Other Common Alimony Issues

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CHAPTER 11

Other Common Alimony Issues

DOES THE INCOME OF A NEW SPOUSE AFFECT CALIFORNIA ALIMONY ORDERS?

Another question that often comes up is whether the supporting spouse's new spouse and his or her income can be considered. The short answer is no. The court cannot consider a new spouse or partner's income in relation to the supporting spouse's ability to pay or marital standard living.

WHAT ABOUT COHABITATION AND ITS IMPACT ON CALIFORNIA ALIMONY?

California Family Code 4323 states:

- (a)
 - (1) Except as otherwise agreed to by the parties in writing, there is a rebuttable presumption, affecting the burden of proof, of decreased need for spousal support if the supported party is cohabiting with a nonmarital partner. Upon a determination that circumstances have changed, the court may modify or terminate the spousal support as provided for in Chapter 6 (commencing with Section 3650) of Part 1.
 - (2) Holding oneself out to be the spouse of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this subdivision.
- (b) The income of a supporting spouse's subsequent spouse or nonmarital partner shall not be considered when determining or modifying spousal support.
- (c) Nothing in this section precludes later modification or termination of spousal support on proof of change of circumstances."

CHILD SUPPORT REDUCTION OR TERMINATION AS GROUNDS FOR AN UPWARD CALIFORNIA ALIMONY ORDER

Termination of child support can also act as a material change of circumstance and as grounds to modify spousal support upward under California alimony laws.



Family Code section 4326 is an interesting statute on this issue. It states:

- (a) Except as provided in subdivision (d), in a proceeding in which a spousal support order exists or in which the court has retained jurisdiction over a spousal support order, if a companion child support order is in effect, the termination of child support pursuant to subdivision (a) of Section 3901 constitutes a change of circumstances that may be the basis for a request by either party for modification of spousal support.
- (b) A motion to modify spousal support based on the change of circumstances described in subdivision (a) shall be filed by either party no later than six months from the date the child support order terminates.
- (c) If a motion to modify a spousal support order pursuant to subdivision (a) is filed, either party may request the appointment of a vocational training counselor pursuant to Section 4331 .
- (d) Notwithstanding subdivision (a), termination of the child support order does not constitute a change of circumstances under subdivision (a) in any of the following circumstances:
 - (1) The child and spousal support orders are the result of a marital settlement agreement or judgment and the marital settlement agreement or judgment contains a provision regarding what is to occur when the child support order terminates.
 - (2) The child and spousal support orders are the result of a marital settlement agreement or judgment, which provides that the spousal support order is nonmodifiable or that spousal support is waived and the court's jurisdiction over spousal support has been terminated.
 - (3) The court's jurisdiction over spousal support was previously terminated.
- (e) Notwithstanding subdivision (b), a party whose six-month deadline to file expired between January 1, 2014, and September 30, 2014, may file a motion pursuant to this section until December 31, 2014.



DEATH OR REMARRIAGE TERMINATES ALIMONY UNLESS THE SPOUSES HAVE COME TO A DIFFERENT AGREEMENT

It should be understood that an alimony order terminates upon either spouse's death or on the supported spouse's remarriage. However, it is not that simple.

The spouses have the power to come to an agreement that extends alimony even if there is a remarriage. The agreement can even take alimony beyond death, such that the estate receives the alimony. Such provisions must be clear and unambiguous in the agreement. Otherwise, the agreement only invites disputes between the spouses in a later court proceeding, when the judge must figure out each spouse's intention.



Success.



Choosing Your Advocate

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CHAPTER 12

Choosing Your Advocate

We sincerely hope you enjoyed this EBook on California alimony laws. In this chapter, we will discuss several suggestions when you search for a California family law attorney. The following suggestions are especially helpful if you believe your family law case may become contested or complex.

Here is a list of our suggestions:

Find an experienced family law attorney

There are two types of experience. The first is actual family law experience as a practicing lawyer in California. The second is local experience in the county where the California case is pending. What experience is right for you of course depends on your case and also your budget. Highly skilled and experienced attorneys may have higher hourly rates and larger retainer deposit requirements.

One aspect of experience you should carefully consider is whether the attorney you hire only practices family law. If you find your attorney handles more than one area of law (criminal law, personal injury, immigration, etc.) along with family law, what does that potentially tell you about that lawyer's expertise in family law compared to an experienced attorney whose practice is limited solely to family law?

Reputation

Reputation is hard to gauge. Here are some tips:

Check the attorney's California State Bar profile to make sure he or she has an active license. Look for any indication of past discipline by the State Bar. Such information is usually stated on the online State Bar profile.

Researching an attorney on the internet may be helpful although an online persona may be misleading. Regardless, the testimonials / reviews an attorney or law firm receive may help you understand how that attorney is perceived by his or her former clients. But be careful here because it is not uncommon for an opposing party on a case (not the attorney's client) to write a negative review, pretending to be a client. The same can happen with a former disgruntled employee, etc. Major websites do not know who is writing the post and do not carefully screen it. The same can be said about positive reviews.



Ask the attorneys with whom you consult for references. Surely, a highly skilled attorney should be able to give you a few references of former clients who have had situations similar to yours and you can contact them. Of course, the attorney will need to get those clients' permission before doing so.

Resources

Is your case complex? If so, carefully consider whether you should hire a family law firm with multiple lawyers and staff to represent you, versus a solo practitioner who may be just one or two attorneys and a secretary. A law firm's resources can go a long way in ensuring proper time is dedicated to your case.

Fees

If you go cheap, you will likely get cheap. Lawyers whose hourly rates are very low and who take a small retainer deposit may lack the skill and experience you need. Do not let the fee issue be your sole, deciding factor. It should be one factor and not the only one. And while flat fee options make sense on certain limited scope family law cases, be very careful when a lawyer tells you he or she will handle your entire case from beginning to end for a flat fee. Find out what that involves and get it in writing.

Also, do not get yourself caught up in a "free" consultation. We know plenty of lawyers who offer a free consultation. Some of them are focused on one thing at consultation – selling the client to retain. Is that what you want? To be "sold" on the lawyer? Or are you there to get answers to questions, discuss strategy and figure out how you should proceed forward. Your consultation should be a strategy session that involves a real discussion about your facts, your issues, your concerns and needs and an honest dialogue about what the lawyer or law firm can do for you.

Beware the cheerleader or barking suit

If your goal is for the attorney to tell you what you want to hear, then you have already gotten off to a bad start. Lawyers who become cheerleaders or overaggressive, barking suits do not do their clients any service. What you want is someone who will give you thoughtful and objective advice. Advice is not always good news or what you hoped to hear. A lawyer who tells you the strengths and weaknesses in your position and speaks with you about strategy and budget is a keeper.



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B. Robert Farzad is the president of Farzad Family Law, a professional corporation. Farzad Family Law is one of the largest family law firms in Orange County, California. The firm has offices in Orange County and Los Angeles.

Mr. Farzad has been licensed to practice law in the State of California since 1996. He is an experienced, respected and trusted family law attorney. His experience includes the handling of complex divorce and parentage matters including high conflict and contested family law cases that involve pre and post judgment alimony issues.

Mr. Farzad is a published writer on divorce and has been a featured blogger on the Huffington Post. His writing has been featured in Orange County Lawyers Magazine and he has been interviewed by writers and radio hosts on his family law knowledge and experience.

B. Robert Farzad remains actively involved in handling family law matters at his law firm.

Mr. Farzad has written additional E-Books on the subjects of [California's Child Custody Laws](#), [California Child Support Support Laws](#) and more.

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