

CHAPTER 208.DIVORCE

General Provisions

Chapter 208: Section 34. Alimony or assignment of estate; determination of amount; health insurance

Section 34. Upon divorce or upon a complaint in an action brought at any time after a divorce, whether such a divorce has been adjudged in this commonwealth or another jurisdiction, the court of the commonwealth, provided there is a personal jurisdiction over both parties, may make a judgment for either of the parties to pay alimony to the other.

In addition to or in lieu of a judgment to pay alimony, the court may assign to either husband or wife all or any part of the estate of the other, including but not limited to, all vested and nonvested benefits, rights and funds accrued during the marriage and which shall include, but not be limited to, retirement benefits, military retirement benefits if qualified under and to the extent provided by federal law, pension, profit-sharing, annuity, deferred compensation and insurance.

In determining the amount of alimony, if any, to be paid, or in fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each party, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income.

In fixing the nature and value of the property to be so assigned, the court shall also consider the present and future needs of the dependent children of the marriage. The court may also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit.

When the court makes an order for alimony on behalf of a spouse, said court shall determine whether the obligor under such order has health insurance or other health coverage available to him through an employer or organization or has health insurance or other health coverage available to him at reasonable cost that may be extended to cover the spouse for whom support is ordered.

When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor do one of the following: exercise the option of additional coverage in favor of the spouse, obtain coverage for the spouse, or reimburse the spouse for the cost of health insurance. In no event shall the order for alimony be reduced as a result of the obligor's cost for health insurance coverage for the spouse.

2. Factors Judges Consider

The following discussion describes the factors, as identified in Massachusetts law, that judges consider when making decisions about alimony and property division.¹

a) Judges *must* consider the following 15 factors:

1) Length of Marriage. Some judges believe longer marriages call for more equal property divisions; they might consider marriages lasting less than 4 years as short, 4-9 as intermediate and over 9 years long.

2) Conduct of the Parties During Marriage. Although considered if it occurred *during* the marriage, judges cannot base decisions *solely* on a spouse's faith, infidelity, or misconduct (including misuse of money).

3) Age of the Parties. Judges might consider how likely it will be for a spouse of a certain age to reenter the work force. For example, if a judge thinks that as 40 year-old woman with not education will have a hard time finding a job, the judge may want to give her more spousal support. Similarly, if the judge thinks she will be able to find work after a period of education the judge may want to give her enough property to cover her expenses until she finishes school.

4) Health of the Parties. This factor may include both the physical and mental condition of the parties, and depends on how it affects a spouse's ability to make money. For example, if a judge believes a wife's back bad will keep her from working temporarily, the husband may have to pay temporary support until she can work again. In another example, if the judge believes clinical depression will keep a husband from ever finding a job, the judge may increase his share of the property.

5) Station of the Parties. Station refers to the style of living each party had during the marriage. Some judges believe that the parties after divorce should have a standard of living as possible to the one existing during the marriage.

6) Occupation of the Parties. Some judges compare the parties' status and salaries. A judge might increase alimony and/or property for a spouse who has less prestige or a lower salary.

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See Stanford N. Katz, "Equitable Distribution in Massachusetts," Mass Family Law Journal (July 1988); see also Hon. Ernest Rotenberg and Paul Kane, "Alimony and Division of Property," Massachusetts Domestic Relations, c. 15 (1992).

7) Amount of the Income of the Parties. A significant difference between the amount of money each spouse makes might lead a judge to give more alimony and/or property to the spouse with the smaller income.

8) Sources of Income of the Parties. Judges must consider everything that give money to the parties, including salary, pensions, bank account interest, etc. Parties must provide accurate financial data. Spouses must not try to avoid alimony obligations by hiding sources of income, wasting assets, or intentionally reducing earnings.

9) Vocational Skill of the Parties. A vocational skill is an ability that my help in getting of holding down a job. Fewer such skills may mean more alimony or property.

10) Employability of the Parties. Employability refers to how likely it will be for one spouse to find of keep a job after the divorce. Employability depends on opportunities for work based on a party's skills, education, past and current work experience, the current job market, company needs, health and age. A judge might give more to a spouse who has little chance of employment.

11) Estate of the Parties. A party's estate includes all the things a party owns. The estate is the property that the judge considers when diving things up. Property a spouse before the marriage might be included in the estate. For example, even if a husband bought a car long before he met his wife, a judge does have the power to give the car to the wife.

12) Liabilities of the Parties. Just like property, liabilities can be divided between the spouses. A judge may give more assets to a party who has debts, or let a party with debts pay less alimony.

13) Needs of Each of the Parties. Parties' needs are what they require to maintain the standard of living they had during the marriage. Among other factors, a judge might look at health or age to determine a party's needs.

14) Opportunity for Future Acquisitions of Capital Assets and Income. A judge may take into account a party's prospects for the future, including actual money earned and future earning potential. For example, a spouse expecting to

inherit money in the near future might receive less alimony or property from the judge.

15) Present and Future Needs of the Children. Judges must consider the present and future needs of any children involved. For example, a station wagon might be given to the parent who will live with the children.

b) Judges *may* consider the contribution of each party in:

- 1) Acquiring** or obtaining a particular piece of property;
- 2) Preserving** or maintaining a piece of property;
- 3) Appreciation in Value** or increase in worth of property; and
- 4) Maintaining of the Home and Family Unit** or homemaking (judges often consider homemaking responsibilities as important as earning money).