

Am I entitled to Alimony?

Whether you are entitled to alimony depends on the specific circumstances of your marriage. Alimony is based on the payor's ability to pay and the payee's need for alimony. Courts tend to steer away from an award of alimony that allows a party to never have to work again, except in rare circumstances. The amount of alimony that can be awarded is based on facts such as the income of both parties, the parties' lifestyles, the length of the marriage and the parties' contribution to the marriage. Typically, if alimony is warranted, a Court will award alimony for a quarter to a third of the length of the marriage.

Another factor in determining whether a party is entitled to child support is whether the party requesting alimony had an affair or deserted the marriage and that conduct was the cause of the divorce. If the party that would otherwise pay alimony can prove both the affair and that it was the cause of the divorce, that party will not be ordered to pay any amount of alimony, even if the parties had been married for decades and the spouse that committed the affair never worked.

Am I entitled to keep the marital house?

Whether you are entitled to keep the marital house depends on many factors. However, if you want to keep the house, you must consider whether you can afford the mortgage payment, insurance, repairs and other expenses without your spouse. You must also consider who is on both the title and mortgage and how the property and debt will be separated. While child support and alimony can be included in determining whether you are capable of paying the expenses related to the house, typically, if one party desires to stay in the house, he or she will be required to refinance the property to remove the other spouse's name from the mortgage and pull out some amount of equity to compensate the other party for his or her share of equity in the house. The person who keeps the house will need to be the only person on the title and the only person responsible for the mortgage, even if the parties agree such a transfer will not occur for some period of time after the divorce.

What do we do if the house has negative equity and cannot be sold or re-financed?

If the parties cannot sell or refinance the property at the time of the divorce, they may be able to obtain an assumption of the existing mortgage with the bank. An assumption is where the bank transfers the title and debt solely into one person's name immediately after a divorce. Since the ability to obtain an assumption is becoming more common, parties usually agree to wait to refinance or sell the property until they have enough equity to do so.

My spouse owns a business, how do I determine his or her income and how do we divide the value of the business?

There are numerous ways to determine a self-employed spouse's income. It depends on many factors including the type of business, the legal form of the business, how much cash the business handles and the amount of money used for personal expenses. Often, our attorneys work with forensic accountants to determine income for the purposes of division of property, alimony and child support. In addition to determining your spouse's income the forensic account can also calculate the equity in the marital business to be included in the division of assets.

Can my ex-spouse be required to pay for my health insurance?

A person cannot keep his or her former spouse on his or her health insurance policy after the divorce is finalized. After the divorce is final, each party will have to obtain his or her own insurance. The parties can agree, or the court can order, however, that one party reimburse the other for that party's health insurance premiums.

Can I date during the divorce?

No. It is not a good idea to date during the divorce. If you are seeking alimony, the party who would have otherwise paid alimony could argue you had been dating this person prior to the filing of the divorce and therefore it is the cause for the divorce. You also open yourself up to arguments that you are exposing the children to a new relationship inappropriately. Additionally, it may be too soon for your children to not only process that you are divorcing the other parent, but that you are also seeking to replace that parent. If your spouse learns that you are dating while the divorce is still pending, his or her emotions related to same may also make it more difficult to amicably resolve the divorce through settlement.

Will my spouse's affair affect custody or parenting time?

Georgia law does not allow a court to prevent a party from having custody or parenting time with his or her child or children simply because he or she had an affair. The affair is considered an issue separate from custody and parenting time. In general, unless the cheating spouse is seeking alimony or is exposing the child or children to inappropriate conduct or people, affairs do not typically carry much weight with a court.

How long would it take for me to obtain a final divorce?

The length of time depends on whether the two parties are able to come to an agreement regarding property division, alimony, child support, custody and visitation. Under any scenario, Georgia law does not permit the Judge to grant the divorce until at least thirty-one days have passed from the date the Defendant was served with the Complaint for Divorce. If the parties are able to agree on all issues prior to filing the divorce, a divorce can be typically be finalized within two to three months from the date you sign up with the firm. This time frame depends on the county, and sometimes the Judge, to which you are assigned and how quickly we can resolve any issues with drafting or signing the paperwork. On the other hand, the length of a contested divorce depends heavily on the complexity of the issues and whether the parties are able to come to an agreement before final trial.