

## LENGTH OF MARRIAGES DEFINED

LENGTH OF MARRIAGE	WHAT IS IT CALLED?	WHAT DOES IT MEAN?
Equal to or less than 11 years	SHORT TERM	REBUTTABLE PRESUMPTION AGAINST ALIMONY
11 YEARS -19 YEARS	MID-TERM	NO PRESUMPTION FOR/ AGAINST ALIMONY
20 YEARS OR MORE	LONG TERM	REBUTTABLE PRESUMPTION IN FAVOR OF ALIMONY

## 5 REBUTTABLE PRESUMPTIONS

5 NEW REBUTTABLE PRESUMPTIONS	OVERCOME BY WEIGHT OF EVIDENCE	WHOSE BURDEN?
Standard of living will be lower post divorce	Preponderance of evidence	The person seeking to show the other will have a higher standard of living.
Against alimony in a short term (11 years or less) marriage	Preponderance of evidence (for bridge the gap or rehabilitative)  Clear and convincing (for durational)	The spouse seeking alimony (obligee/payee).
In favor of awarding alimony in a long term (20 years or more) marriage	Clear and convincing evidence that there is no need.	The potential obligor/ payor.
Equal timesharing is in the best interest of child(ren).	Clear and convincing of “ <b>extenuating circumstances</b> ” and written findings.	Person seeking alternative schedule.
Modification of alimony retroactive to date of filing petition to modify.	It doesn't tell us. (preponderance of evidence?)	Person opposed to retroactive modification.

PRIORITY: Not a rebuttable presumption but a PRIORITY: Court shall “prioritize” bridge the gap, followed by rehabilitative, over any other form of alimony.

REHABILITATION GOAL: Court may only award combinations of forms to achieve greater economic assistance to achieve rehabilitation. This tells us the entire goal of the statute is “rehabilitation” of the recipient spouse.

**BURDENS OF PROOF AND WEIGHT OF EVIDENCE  
(NOT NECESSARILY NEW)**

<b>SPOUSE SEEKING</b>	<b>BURDEN OF PROOF</b>	<b>WEIGHT OF EVIDENCE</b>
Alimony	Need and ability to pay	Preponderance of evidence BUT SEE rebuttable presumptions
Modify alimony upward	Income has increased	Clear and convincing
Modify alimony upward if need existed at time of DOM	Need still exists, increased income for one year	Preponderance of evidence.
Alimony when spouse retired pre-filing	Ability to pay and need	Clear and convincing
Overcome imputation of income	No ability to earn imputed income by reasonable means	Preponderance of
Overcome gift presumption	Gift was not intended	Clear and convincing
Overcome presumption all real property titled by TE is marital property, regardless of when acquired.	Subject property is non-marital	Clear and convincing
Overcome presumption all personal property titled by TE is marital regardless of when acquired.	Subject property is non-marital	Clear and convincing
Security for alimony	<b>“Special circumstances”</b>	Doesn’t say

<b>SPOUSE SEEKING</b>	<b>BURDEN OF PROOF</b>	<b>WEIGHT OF EVIDENCE</b>
Durational for longer than 50% of the length of the marriage	Circumstances justifying the need for a longer award of alimony	Preponderance of
Bifurcation within 180 days of service	“No” unless <b>exceptional circumstances</b> , clearly necessary, does not cause irreparable harm and written findings	
Bifurcation after 180 days	“May” only if necessary to protect parties and children & written finding of no irreparable harm	
Bifurcation more than 365 days	“Shall” unless irreparable harm.	
To Set Aside Prior Order that does not meet certain criteria	Legislative amendments constitute substantial change, but must prove fraud, financial ....essentially same criteria needed to set aside prenupt.	Clear and convincing
To avoid using coverture fraction	Circumstances that formula inequitable under facts	
Keep alimony despite supportive relationship.	Need not reduced by supportive relationship	Clear and convincing

### 6 (at least) WRITTEN FINDINGS

<b>WHEN</b>	<b>WRITTEN FINDINGS</b>	<b>REGARDING</b>
COMBINATION OF ALIMONY FORMS	X	Basis for awarding a combination of forms including the type of alimony and the length of time.

WHEN	WRITTEN FINDINGS	REGARDING
SECURITY OR INTEREST ON INSTALLMENT PAYMENTS REQUIRED	X	Any deferred payments, amount of security required and the interest.
ALIMONY IS AWARDED	X	Factors supporting or denying award.  Written finding of ability to pay (but for some reason doesn't say need).  Don't forget rehabilitative plan.
DURATIONAL ALIMONY	X	An award of another form of alimony or combination of other forms of alimony is not appropriate.
EXCEED THE ALIMONY GUIDELINES	X	Need for additional support
AWARDING SOMETHING OTHER THAN 50-50 TIMESHARING	X	<b>"Extenuating circumstances"</b>
Bifurcation within 180 days	X	<b>"Exceptional circumstances,"</b> clearly necessary and does not cause irreparable harm
Bifurcation after 180 days	X	No irreparable harm
Bifurcation after 365 days*	NO	
Supportive relationship	X	Whether supportive relationship exists.

\* Court "SHALL" upon request of either party grant a final dissolution with reservation to subsequently determine all other substantive issues, absent a showing of irreparable harm and Court MUST enter temporary orders necessary to protect parties and their children (restrict sale of property, protect and preserve marital assets, establish temporary support, provide maintenance of health insurance, provide maintenance of life insurance).

NOTE: Evidentiary findings ok for security for alimony re: availability, cost, and financial impact on the obligated party.

**ALIMONY “GUIDELINES”**

<b>DURATIONAL AWARDED</b>	<b>LIMITATION ON INCOME</b>	<b>STANDARD TO OVERCOME</b>
SHORT TERM	25% GROSS INCOME	CLEAR AND CONVINCING (PAYEE’S BURDEN)
MID TERM	35% GROSS INCOME	PREPONDERANCE (PAYEE’S BURDEN)
LONG TERM	38% GROSS INCOME	CLEAR AND CONVINCING (PAYOR’S BURDEN)

**IMPUTATION OF INCOME FOR OBLIGEE**

<b>OBLIGEE UNEMPLOYED</b>	<b>“SHALL” IMPUTE</b>	<b>UNLESS</b>
less than a year	90% of former net monthly	OBLIGEE proves by preponderance of evidence that no ability to earn imputed income by reasonable means.
1-2 years	80%	“
2-3	70%	“
3-4	60%	“
4-5	50%	“
5+	40%	“

**DEFINITIONS**

Special circumstances: “Special” is defined as “unusual, extraordinary” by Black’s Law Dictionary.

## **TEMPORARY SUPPORT 61.071**

**61.071:** The Court shall allow alimony calculated in accordance with 61.08 and a reasonable sum of suit money.

Note: 61.08 is now completely different and in a short term marriage if there is a presumption of no alimony, is there also a presumption of no temporary alimony in a short term marriage? It doesn't say but one could reasonable infer.

## **EQUITABLE DISTRIBUTION CHANGES 61.075**

**MARITAL ASSETS:** Now specifically include the pay down of principal of a note and mortgage secured by nonmarital real property and a portion of any passive appreciation in the property, if the note and mortgage secured by the property are paid down from marital funds during the marriage.

Issue Spot: Marital funds are being used to pay down note and mortgage of nonmarital real estate.

How do you determine the portion of passive appreciation subject to equitable distribution?

Easy! Multiply the coverture fraction by the passive appreciation in the property during the marriage!

**COVERTURE FRACTION MULTIPLIED BY THE PASSIVE APPRECIATION IN THE PROPERTY DURING THE MARRIAGE = THE PORTION OF THE PASSIVE APPRECIATION THAT IS MARITAL AND SUBJECT TO EQUITABLE DISTRIBUTION**

### **Coverture Fraction**

**NUMERATOR= TOTAL PAYDOWN OF PRINCIPAL FROM MARITAL FUNDS OF ALL NOTES AND MORTGAGES SECURED BY PROPERTY DURING THE MARRIAGE**

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**DENOMINATOR= VALUE OF THE SUBJECT PROPERTY ON THE DATE OF THE MARRIAGE, THE DATE OF ACQUISITION OF THE PROPERTY, OR THE DATE THE PROPERTY WAS ENCUMBERED BY THE FIRST NOTE AND MORTGAGE ON WHICH PRINCIPAL WAS PAID FROM MARITAL FUNDS, WHICHEVER IS LATER. MULTIPLY THE COVERTURE FRACTION BY PASSIVE APPRECIATION.**

## Passive Appreciation

PASSIVE APPRECIATION =

VALUE OF THE PROPERTY ON VALUATION DATE

MINUS - GROSS VALUE OF PROPERTY ON DOM OR DOA, WHICHEVER IS LATER

MINUS - ANY ACTIVE APPRECIATION OF PROPERTY DURING MARRIAGE

MINUS - ANY ADDITIONAL ENCUMBRANCES ON PROPERTY DURING THE MARRIAGE IN EXCESS OF THE FIRST NOTE AND MORTGAGE

PASSIVE APPRECIATION = SUBTRACTING THE GROSS VALUE OF THE PROPERTY ON THE DATE OF THE MARRIAGE OR DATE OF ACQUISITION OF THE PROPERTY, WHICHEVER IS LATER, FROM THE VALUE OF THE PROPERTY ON THE VALUATION DATE IN THE DISSOLUTION OF MARRIAGE ACTION, LESS ANY ACTIVE APPRECIATION OF THE PROPERTY DURING THE MARRIAGE AND LESS ANY ADDITIONAL ENCUMBRANCES SECURED BY THE PROPERTY DURING THE MARRIAGE IN EXCESS OF THE FIRST NOTE AND MORTGAGE ON WHICH PRINCIPLE IS PAID FROM MARITAL FUNDS.

### MARITAL PORTION OF PROPERTY

The TOTAL marital portion of the property shall consist of the marital portion of the passive appreciation, the mortgage principal paid during the marriage from marital funds, and any active appreciation of the property, not to exceed the total net equity in the property at the date of valuation.

### COURT "SHALL" APPLY FORMULA

The court SHALL apply this formula unless party shows "circumstances sufficient to establish that application of the formula would be inequitable" under the facts presented.

### COURT "MAY" REQUIRE SECURITY

If installment payments are ordered, the court MAY require security and a reasonable rate of interest, or otherwise recognize the time value of money in determining the amount of installments. If installments are required, the court SHALL make written findings relating to any deferred payments, amount of security required, and the interest.

## DEFINITIONS OF MARRIAGES 61.08

- LONG: 20 years or more
- MID: 11-19 years
- SHORT: Less than 11 years

## TYPES OF ALIMONY AVAILABLE UNDER 61.08

BRIDGE THE GAP

REHABILITATIVE

DURATIONAL

NOTE: Court shall prioritize in that order and may ONLY award a combo of forms to achieve greater economic assistance to the recipient spouse to achieve rehabilitation.

SECOND NOTE: Court may order periodic payments, payment in lump sum or both.

## ADULTERY 61.08

Court MAY consider adultery of either party and the circumstances thereof when determining the amount of alimony to be awarded.

## FACTORS FOR ALIMONY (new ones in bold) 61.08

If party seeking alimony has met burden of proving need and ability to pay, then court MUST make WRITTEN FINDING that obligor has ability to pay and shall consider all relevant factors in determining the proper type and amount of alimony.

- a. Duration of marriage.
- b. Age, physical and emotional condition of each party.
- c. The financial resources of each party, including the portion of **non marital assets that were relied upon by the parties during the marriage** and the marital assets and liabilities distributed to each.
- d. Earning capacities, educational levels, vocational skills, employability, time necessary for either to obtain education or training....



- e. Contributions to marriage (including homemaking, child care, education and career building of other party).
- f. Responsibilities each party will have with regard to any common minor children.
- g. Tax treatment and consequences, **which must be consistent with applicable state and federal tax laws** and may include a designation that all or portion of the payment is nontaxable, nondeductible.
- h. All sources of income.....**which was acquired during the marriage or acquired outside the marriage and relied upon during the marriage.**
- i. **The needs and necessities of life after DOM, taking into account the lifestyles of the parties during the marriage, but subject to the presumption in paragraph (j).**
- j. **The net income and standard of living available to each party after the application of the alimony award. There is a rebuttable presumption that both parties will have a lower standard of living after the DOM than the standard of living enjoyed during the marriage. This presumption may be overcome by a preponderance of the evidence.**
- k. Any other factor necessary to do equity and justice, **if that factor is specifically identified in the award with findings of fact justifying the application of the factor.**

### **LIFE INSURANCE TO SECURE ALIMONY 61.08**

Court MAY order party paying alimony to purchase or maintain a life insurance policy. Nothing new.

But now, the amount may be decreasing or another form of term life insurance at the option of the obligor.

Court MAY award such security only upon a showing of “special circumstances” and if the court awards the security, must make specific WRITTEN FINDINGS re:

- availability
- cost
- financial impact on obligated party.

Security is modifiable if alimony award is modified and SHALL be reduced commensurate with any reduction of alimony award.

NOTE: No reciprocal language re: increasing the security if the alimony is ever modified upward.

### **REHABILITATIVE ALIMONY 61.08**

REMINDER: This is not new but remember that there must be a specific and defined rehabilitative plan which shall be included as part of any order awarding rehabilitative alimony. This is consistent with all the written findings required when alimony is involved.

MODIFIED OR TERMINATED **only during the rehabilitative period**, in accordance with 61.14, upon substantial change of circumstances, noncompliance with rehabilitative plan or completion of plan.

### **DURATIONAL 61.08**

AVAILABLE:

Available in short term, mid term or long term marriage.

WRITTEN FINDING: When awarding durational, court **MUST** make **WRITTEN FINDINGS** that an award of another form of alimony or combo of forms is not appropriate.

MODIFICATION: Changed “may” be modified upon a substantial change of circumstances or upon the existence of a supportive relationship to “**SHALL.**”

LENGTH OF AWARD: May not exceed 50% the length of the marriage, unless the party seeking proves by **preponderance of evidence** the circumstances justifying the need for a longer award, which circumstances must be set out **IN WRITING** by the court.

### **PRESUMPTIONS RE: ALIMONY 61.08**

SHORT TERM MARRIAGE (up to 11 years)

Rebuttable presumption against alimony (of any kind) in a short term marriage (less than 11 years).

If seeking bridge the gap or rehab, must demonstrate a need by **preponderance of evidence** to overcome the presumption.

If seeking durational, must demonstrate need by **clear and convincing** evidence.

If overcome presumption, court SHALL determine monthly alimony not to exceed **25%** of obligor's gross monthly income and the gross income does not include sources of non marital income that were not relied upon during the marriage.

#### MID TERM MARRIAGE (11-19 years)

No presumption for or against alimony.

Must prove need and ability to pay by **preponderance of the evidence**.

May not exceed **35%** of obligor's gross income (not including sources of non marital income not relied upon during the marriage).

#### LONG TERM MARRIAGE (20 years or more)

Rebuttable presumption in favor of alimony in long term marriage.

Obligor may overcome presumption by **clear and convincing** evidence that there is no need for alimony.

May not exceed **38%** of gross income, not including sources of income that were acquired outside of marriage and not relied upon the parties during the marriage.

COMBINATION OF FORMS OF ALIMONY: Notwithstanding the foregoing during the temporary time frame during which rehab alimony is awarded, the total amount of alimony may not exceed **40%** of the obligor's gross income (which does not include nonmarital income that was not relied upon by the parties during the marriage).

MAY EXCEED GROSS INCOME LIMITS if, in accordance with the factors, the court determines there is a need for additional alimony and if so, must make **WRITTEN FINDINGS**.

### **RETIREMENT 61.08**

RETIREMENT BEFORE FILING OF PETITION = NO ALIMONY UNLESS...

If obligor meets requirements of retirement per 61.14(12), before petition is filed, no requirement to pay alimony, **UNLESS** party seeking alimony can prove by **clear and convincing evidence** the party has the ability to pay in addition to all requirements of the section.

## **IMPUTATION OF INCOME 61.08**

**NET INCOMES EQUAL:** Notwithstanding any other provision of law, alimony may not be awarded to a party who has a monthly NET income that is equal to or more than the other party.

NOTE: Here is does not mention if the income is derived from sources outside the marriage or if relied upon by parties during the marriage.

**SOCIAL SECURITY BENEFITS:** May not be imputed to the obligor as demonstrated by a social security retirement benefits letter.

NOTE: Nothing mentioned here about not being allowed to impute social security benefits to obligee, just obligor.

**MAY IMPUTE INCOME TO THE OBLIGEE WHO IS NOT WORKING AS FOLLOWS:**

Less than one year:	90% of prior net income
1-2 years:	80%
2-3 years:	70%
3-4 years:	60%
4-5 years:	50%
more than 5 years:	40% or net income of minimum wage worker at time of filing, whichever is greater.

NOTE: These imputations apply to obligee, not obligor, who may have "RAIDS" better known as "Recently Acquired Income Deficiency Syndrome" once a marriage begins to undergo a breakdown.

**MAY OVERCOME PRESUMPTION OF IMPUTATION OF INCOME**  
by preponderance of evidence that he or she has inability to earn imputed income through reasonable means, court SHALL reduce imputed income. If asserting a disability, must meet definition as determined by Social Security Administration.

## **ALIMONY AND CHILD SUPPORT UNCONNECTED WITH DISSOLUTION 61.09**

Alimony awarded under this section shall be calculated in accordance with s. 61.08.

## PRESUMPTION OF EQUAL TIMESHARING 61.13

Equal timesharing with a minor child by both parents is in the best interest of the child unless the court finds:

- a. The safety, well-being, and physical, mental and emotional health of the child would be endangered by equal timesharing, that visitation would be presumed detrimental consistent with s. 39.0139 (3), or that supervised visitation is appropriate, if any is appropriate;
- b. **Clear and convincing evidence** of “extenuating circumstances” justify a departure from equal timesharing and the court makes written findings justifying the departure from equal timesharing;
- c. A parent is incarcerated;
- d. The distance between parental residences makes equal time-sharing impracticable;
- e. A parent does not request at least 50 percent timesharing;
- f. A permanent injunction has been entered or is warranted against a parent or household member relating to contact between the subject of the injunction and the parent or household member; or
- g. Domestic violence, as defined in s. 741.28, has occurred.

Applicable to final custody orders made on or after July 1, 2013. These amendments do NOT constitute a substantial change in circumstances that warrant modification of a final custody order entered before July 1, 2013.

### 39.0139: VISITATION OR OTHER CONTACT; RESTRICTIONS

(3): Presumption of Detriment.

(a) rebuttable presumption of detriment

1. probable cause of sexual abuse
2. found guilty or entered a guilty plea or nole contendere to:
  - a. removing or concealing minors
  - b. sexual battery
  - c. lewd and lascivious behavior
  - d. lewdness and indecent exposure
  - e. incest
  - f. abuse of children
3. sexual predator

#### 741.28: Domestic Violence Definitions

- (2) Any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

### **ENFORCEMENT AND MODIFICATION OF SUPPORT, MAINTENANCE, OR ALIMONY AGREEMENTS OR ORDERS 61.14**

#### TERMINATING

The legislature added the word “terminating” to what a party may apply to the court for....as in one may apply to the court for an order enforcing, modifying or terminating .....a support order.

#### MODIFICATION UPWARD WHEN NEED NOT MET AT TIME OF DOM AND INCOME INCREASED.

- Continued need
- Income for one year
- No supportive relationship
- Preponderance of evidence

If Court determines at time of DOM there is a need that was/is not met by alimony awarded, and such need continues to exist, an alimony award “shall” be modified upward upon a showing of preponderance of the evidence of increased ability to pay.

Increase in income may not be considered permanent unless maintained for one year (absent finding of fraud).

**SUPPORTIVE RELATIONSHIP:** Need written findings to reduce or terminate alimony award based upon supportive relationship. Obligee must show by clear and convincing evidence that he /she still has a need despite the supportive relationship in order for alimony to continue.

#### NEW ATTORNEY FEE PROVISION

In an action under this section (61.14), if it is determined that the obligee or obligor unnecessarily litigated the underlying petition for modification or termination, the court may award the other party his or her reasonable attorney fees and costs pursuant to s. 61.16 and applicable case law.

Essentially, codifying Rosen v. Rosen and Diaz and their progeny which interpreted 61.16. Seems to suggest causes of action for attorney fees arise out of case law, which is not accurate. The cases arise out of statute 61.16.

More evidence of “fault” in the statute.

## **BIFURCATION AND RETROACTIVE APPLICATION 61.19**

61.19. Entry of judgment of dissolution of marriage

### **BIFURCATION**

#### **FIRST 180 DAYS:**

- During first 180 days after the date of service of original petition for DOM, the court may not bifurcate, unless court makes written findings that there are “exceptional circumstances” that make the use of this process clearly necessary to protect the parties or their children and granting a final DOM will not cause irreparable harm.
- Court “shall” enter temporary orders necessary to protect the parties and their children.
- Desire to remarry not enough.

#### **MORE THAN 180 DAYS:**

- If more than 180 days have elapsed after the date of service of original petition for DOM, the court “may” bifurcate only if the court enters temporary orders necessary to protect parties and their children, and makes written findings that no irreparable harm will result from granting final dissolution.

#### **MORE THAN 365 DAYS:**

- If more than 365 days have elapsed since the date of service of original petition of DOM, absent a showing of irreparable harm, the court “shall” upon the request of either party, immediately grant a final dissolution with reservation of jurisdiction (a.k.a. bifurcation).

#### **IN ALL THREE SCENARIOS:**

Before the Court may grant bifurcation, the Court “shall” enter temporary orders necessary to protect the parties and their children, which include, but are not limited to:

- Restrict sale or disposition of property
- Protect and preserve marital estate
- Establish temporary support
- Provide maintenance of health insurance
- Provide maintenance of life insurance.

## RETROACTIVE APPLICATION

THE AMENDMENTS APPLY TO and IN AND OF THEMSELVES CONSTITUTE SUBSTANTIAL CHANGE OF CIRCUMSTANCES TO MODIFY AMOUNT OR DURATION FOR:

1. FINAL JUDGMENTS OF ALIMONY AWARDS ENTERED BEFORE JULY 1, 2013.
2. FINAL JUDGMENTS INCORPORATING AGREEMENTS ENTERED BEFORE JULY 1, 2013 IF:
  - A. Duration of marriage was 15 years or less and duration of alimony exceeds length of marriage.

AND

  - B. Agreement was not expressly non-modifiable.
3. ALL OTHER FINAL ORDERS ENTERED BEFORE JULY 1, 2013, INCORPORATING AGREEMENT, THAT DON'T MEET ABOVE CRITERIA, BUT ARE NOT NON-MODIFIABLE AND OBLIGOR PROVES BY CLEAR AND CONVINCING EVIDENCE THAT:
  - A. Obligor did not execute the agreement voluntarily;
  - B. The agreement was a product of fraud, duress, coercion, or overreaching; or
  - C. The agreement was unconscionable when it was executed and, before execution of the agreement, the obligor proves by "**clear and convincing**" evidence that obligor:
    1. Was not provided fair and reasonable disclosure of property or finances of obligee.
    2. Did not voluntarily and expressly waive, in writing, an right to disclosure of the property or financial obligations of the other party beyond disclosure provided.
    3. Did not have or reasonably could not have had an adequate knowledge of financial obligation of the other party.



## **SCHEDULE FOR MODIFICATION ACTIONS**

FOR 1. AND 2. ABOVE:

- A. An obligor who is subject to alimony of 15 years or more may file a modification on or after July 1, 2013.
- B. An obligor who is subject to alimony of 8 years or more but less than 15 years, may file a modification action after July 1, 2014.
- C. An obligor who is subject to alimony of less than 8 years may file a modification action on or after July 15, 2015.

FOR 3. ABOVE, it doesn't say a specific time so assume after July 1, 2013.