

Day #4: Alimony Laws in New Jersey

Hi,

Thanks again for Subscribing. Today we discuss the sometimes touchy topic of alimony, or spousal support. Although alimony reform was recently passed, in some ways the more things have changed the more they have stayed the same.

The basic factors judges will consider when determining an alimony award may include:

- 1) The actual need and ability of the parties to pay;
- 2) The duration of the marriage;
- 3) The age, physical and emotional health of the parties;
- 4) The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living;

5) The earning capacities, educational levels, vocational skills, and employability of the parties;

6) The length of absence from the job market and custodial responsibilities for children of the party seeking maintenance;

7) Parental responsibilities for children;

8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;

9) The history of the financial or non-financial contributions to the marriage by each party, including contributions to the care and education of the children and interruption of personal careers or educational opportunities;

10) The equitable distribution of property ordered and any payout of equitable distribution, directly or indirectly, from current income, to the extent that this consideration is reasonable, just and fair;

11) The income available to either party through investments of all assets held by the party;

12) The tax treatment and consequences to both parties of any alimony awards, including the destination of all or a portion of the payment as a nontaxable payment;

13) The nature, amount, and length of *pendente lite* support paid, if any; and

14) Any other factors the court may deem relevant.

But what does the above really mean? How will these factors coalesce into an alimony award—assuming an alimony award is appropriate at all?

When I explain alimony to new clients, I do not focus on the above factors. The truth is, those factors do not form the heart of real life alimony negotiations. Instead, you should understand the following:

1) **Alimony is, legally speaking, now “gender neutral.”** Although in application we may not have reached 100% gender neutrality, we are getting close. If the Wife is the breadwinner in a long-term marriage, then she may expect to pay alimony.

2) The length of the marriage is extremely important. There are different types of alimony that may be awarded in New Jersey, including open durational alimony (analogous to what was previously referred to as permanent alimony). (there is also rehabilitative alimony, limited duration alimony, and reimbursement alimony. Also, permanent alimony for those divorced prior to the reform continues prospectively).

Most breadwinners want to avoid paying long-standing or open durational alimony. The longer the parties are married, however, the greater the chances are that they will be faced with such a burden.

This is particularly true of marriages that exceed twenty years in length, although there is no hard and fast rule to determine whether alimony is “open durational” or not. The alimony reform statute does state, however, that “For any marriage or civil union less than twenty years in duration, the total duration of alimony shall not, except in exceptional circumstances, exceed the length of the marriage or civil union.”

The factors for "exceptional circumstances" for an award to last longer than the marriage include:

- (1) the age of the parties at the time of the marriage or civil union and at the time of the alimony award;
- (2) the degree and duration of the dependency of one party on the other;
- (3) Whether a spouse or partner has a chronic illness or unusual health circumstances;
- (4) Whether a spouse or partner has given up a career;
- (5) Whether a spouse or partner has received a disproportionate share of equitable distribution;
- (6) The impact of the marriage or civil union on either party's ability to become self-supporting;
- (7) Tax considerations; or
- (8) any other relevant factors.

3) Alimony has generally been taxable to the payee and tax-deductable to the payor and taxable to the recipient. I have often advised my clients facing an alimony obligation that this is the one silver lining for those that pay alimony. They often contest it being much of a silver lining, but the tax benefit is helpful, particularly when compared to child support payments—-which provide no such tax

relief. However, this clause may be modified under the pending federal tax reform act. [Click here to read my recent blog post on this subject.](#)

4) **“Lump Sum Alimony”**. This can be bargained for if both parties are interested in pursuing this over payments made over time. Such buy-outs are generally “tax affected” which leaves this option somewhat up in the air given the pending tax reform.

5) **Life Insurance Obligation**. People are often surprised to learn most marital settlement agreements will require an individual to take out a term life insurance policy that will protect the other party’s alimony support expectation. This is an additional expense that often leaves the payor’s feeling unhappy.

6) **Good faith retirement, cohabitation, or remarriage**. These additional factors may provide sufficient reasons to terminate, suspend, and/or modify alimony. Assuming there is no language to the contrary, “permanent and substantial” changes in circumstances may also provide reasons to amend and—in some instances—to even terminate an existing alimony obligation.

Like most of family law, alimony law is extremely fact-sensitive. Accordingly, it may be important to meet with an attorney to determine how your specific facts may be applied. Tomorrow those of you without children get another break as we head into the complicated universe of New Jersey child custody laws.

All the best,

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