

Family Law

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Frequently Asked Questions About Alimony In New Jersey

What is alimony?

Alimony is the term that is used for payments that are made by one spouse to the other after a divorce. Alimony is used to balance the inequalities in the parties' earning capacities. Alimony is not designed to punish the payor spouse, and it is not a reward to the payee spouse. Instead, alimony is designed to permit both parties to continue to live, as best as possible, the same standard of living that they became accustomed to during the marriage. Alimony payments are taxable to the payee spouse, and tax deductible to the payor spouse.

Are there different kinds of alimony?

There are several varieties of alimony. The five most common varieties are: pendente lite alimony, permanent alimony, limited duration alimony, rehabilitative alimony and reimbursement alimony.

What is pendente lite alimony?

Pendente lite alimony is basically temporary alimony that is

awarded before the final judgment of divorce is entered. The goal of pendente lite alimony is to maintain the status quo of the family lifestyle. The court wants to insure that the mortgage is paid, the lights stay on, and that the kids are fed.

Payments made by one spouse to the other after a divorce are called alimony. The five most common varieties of alimony awarded in New Jersey are: pendente lite alimony, permanent alimony, limited duration alimony, rehabilitative alimony and reimbursement alimony.

What is permanent alimony?

Permanent alimony is usually awarded in a long-term marriage where there is a large disparity in the earning capacity between the spouses. Moreover, the dependent spouse must be unable to earn a sufficient income to maintain a reasonably comparable marital lifestyle. Permanent alimony can be modified based on a change of circumstances.

However, the standards to modify a permanent alimony award are very strict.

What is limited duration alimony?

The most common form of alimony that is awarded is called limited duration alimony. This is also frequently called term alimony. This type of alimony is payable only for a specific period of time. This type of alimony is usually awarded in mid-length marriages. Like permanent alimony, it can also be modified if there is a change in circumstances.

What is rehabilitative alimony?

Just like limited duration alimony, rehabilitative alimony is payable for a specific term. The purpose of rehabilitative alimony is to provide support to a dependent spouse while he or she acquires education or training to permit him or her to obtain employment that would allow this spouse to support him/herself. Rehabilitative alimony does not terminate if the supported spouse gets remarried.

(Continued on Page 2)

(Continued from page 1)

What is reimbursement alimony?

Reimbursement alimony compensates a spouse for economic sacrifices that were made during the marriage when these sacrifices helped to enhance the other spouse's earning capacity. Reimbursement alimony is often awarded in cases where one spouse supports the other so that he or she can obtain a professional degree, with the understanding that both spouses will materially benefit from one spouse having obtained that degree in the future. The court may find it unfair for the spouse with the degree to retain not only the degree, but all of the financial benefits of having the degree. Reimbursement alimony generally covers all financial contributions towards the former spouse's education, household expenses, and educational contributions. Reimbursement alimony does not terminate if the supported spouse remarries.

How is alimony determined?

A family court has a fair amount of discretion to determine an alimony award. New Jersey has case law and a statute that requires the courts to consider very specific factors when it calculates alimony. There are some guidelines and objective standards for the courts to consider, but there is no specific formula for a family court to calculate alimony. In

general, New Jersey case law states that the court must consider the marital lifestyle, the supporting spouse's ability to pay, and the dependent spouse's ability to contribute to his/her own support.

The alimony statute, N.J.S.A. 2A:34-23(b), states that the court must consider the following thirteen factors:

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 during the marriage and the likelihood that each party can maintain a reasonable comparable standard of living.
5. The parties' earning capability, education and employability.
6. The length of absence from the job market.
7. Parental responsibilities for the children.
8. The time and expense needed to acquire education or training to enable a dependent spouse to obtain appropriate employment.
9. The financial and non-financial contributions of each spouse to the marriage.
10. Equitable distribution.
11. Income available and non-financial contributions of each spouse to the marriage.
12. The tax consequences of alimony.
13. Any other factor which the court deems relevant.

In summary, the main purpose of alimony is to permit the de-

pendent spouse to live the same lifestyle after divorce that he or she lived during the marriage.

How does a spouse's earning capacity affect alimony?

When a court determines alimony, the actual income of the supporting spouse is not always the only factor used to determine the alimony award. In many cases, the court will also assess if the supporting spouse is underemployed. The court may impute income to the supporting spouse. The court will analyze the supporting spouse's income based on the New Jersey Occupational Wage Survey, which gives an average of yearly incomes for specific fields and occupations.

Can a dependent spouse be forced to work?

A very popular claim in divorce cases is that the dependent spouse has earning capacity, and that he or she should go get a job. In cases like these, the dependent spouse may have to be evaluated by an employability expert to assist the court to determine an appropriate level of income to impute to that spouse. The expert's report may enable the court to consider whether the dependent spouse has the ability or inability to contribute to his or her support.

Can alimony be changed after the divorce?

(Continued from page 3)

(Continued on page 3)

Yes. As previously explained, the main purpose of alimony is to permit the dependent spouse to maintain a reasonable standard of living. Alimony can be increased or decreased if the moving party can prove to the court that there was a "change in circumstances" since the divorce. The party who files the application has the burden to prove that there has been a change in circumstances. The most common changes in circumstances are: a major health problem, a loss of employment, failure of a business, or a decrease in income, and/or retirement.

What is the standard to modify alimony?

Alimony can always be modified upon a showing of a "change of circumstances." The party who is seeking a modification of alimony bears the burden of proving that there is a "change of circumstances." Sometimes, the party must show how the changed circumstances have sufficiently impaired that party's ability to earn a reasonable living.

If a spouse remarries, does this terminate the obligation to pay alimony?

If the spouse who pays alimony remarries, then remarriage does not terminate the alimony obligation.

If a spouse receiving alimony remarries, does this terminate the right to receive alimony?

If the spouse receiving alimony remarries, then any permanent alimony or term alimony will be terminated, regardless of the parties' financial circumstances. The rationale for this is because the supported spouse has entered into a new marital partnership, and the former spouse is not required to financially support this new partnership. If the supported spouse's new marriage fails, then he or she can't later peti-

The main purpose of alimony is to permit the financially dependent spouse to live as close to the same lifestyle after divorce that he or she lived during the marriage.

tion the court to reinstate the first alimony obligation.

Can a spouse file in court for an increase in alimony?

Sometimes, a supported spouse will file an application for an increase of alimony. The grounds for the motion is that the supported spouse needs additional income to maintain a decent lifestyle, or that the payor's finances have improved. If the payee spouse is not receiving sufficient alimony to live, then a post-judgment increase in the payor's income may justify an increase in alimony.

Can a spouse file a motion

for a decrease in alimony?

If a payor's income decreases then he or she can file a motion to ask the court to decrease or terminate his or her alimony obligation. The payor spouse must demonstrate that the decrease in income and/or salary was bona fide, in good faith, and not reduced in order to avoid and limit alimony.

If a spouse retires, does this constitute a "change in circumstances" to justify a termination of alimony?

If a party has a good faith retirement at the age of 65, then this may constitute a change of circumstances to justify a modification of alimony. The court will also consider several other factors such as: the age of the parties; how the pension and retirement assets were divided during the marriage; whether the retirement was reasonable; and whether the retirement was motivated to reduce alimony. Our New Jersey courts have held that when a person retires at the age of 65, he or she is entitled to a plenary hearing to reduce alimony based on a "change of circumstances."

If a payor spouse retires before the age of 65, that spouse is subjected to a more stringent standard to have alimony terminated. The court will then balance the benefits to the payor spouse against the disadvantage to the payee spouse. Only if the advantage

(Continued on page 4)

(Continued from page 3)

to the retiring spouse substantially outweighs the disadvantage to the payee spouse will the court view the retirement as a legitimate change of circumstances which would justify a modification of alimony.

Can alimony be terminated if the supported spouse cohabitates with another person?

Cohabitation alone is not enough to reduce alimony. The cohabitation must also be coupled with some economic consequence in order to modify alimony.

The courts use the economic contribution test to determine whether an alimony award to a dependent spouse should be reduced. This test looks to see if the cohabitation is similar to a permanent house situation or a marital like relationship. If the dependent spouse's new boyfriend or girlfriend reduces the dependent spouse's financial needs, then alimony may be reduced. Moreover, if the de-

pendent spouse is using alimony to support the live-in boyfriend or girlfriend, then the payor has very good grounds to reduce alimony.

If a person receives an inheritance does this affect alimony in any way?

Although an inheritance is not subject to equitable distribution, any income derived from any inheritance can be used to determine any alimony award.

How does alimony affect the calculation of child support?

When the court calculates child support it will deduct any alimony payments from the payor's income. Moreover, the alimony will be included as income to the payee spouse. In summary, a high alimony payment may result in a reduction in child support. Alimony is deductible by the payor spouse, and it must be declared as income to the payee spouse.

If a spouse commits adultery does this increase alimony?

Usually not. However, from a practical point of view, marital fault or infidelity may affect alimony since the judges are human. A court must examine the proofs and determine that the amount of alimony is "fit, reasonable and just." Alimony can't be used to punish a payor spouse, or be used as an award to a payee spouse.

Can alimony be awarded during a domestic violence hearing?

The start of many divorces occur when a party files a domestic violence complaint. Quite often, in a DV case, the dependent spouse will also request that the court issue a temporary alimony award. A court in a DV case has the authority to make a temporary alimony award. ❖ ❖

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