

Divorce in New Jersey- Alimony

August 15, 2023

By Megan Smith

Originally posted on 2/26/2019, no content changes.

Alimony is financial support paid by one spouse to the other. Alimony is in addition to child support and is not related to the needs of the child or the child's emancipation. It is support paid by one spouse to the other solely for the support of the recipient spouse regardless of the needs or status of the children.

There are very important differences between alimony and child support, not only in terms of a person's initial entitlement but with regard to the duration, the ability to modify the amount, and the termination of the payments. However, one of the most important distinctions is that child support is not tax deductible by the person making the payments, nor is it considered taxable income to the person who is receiving the payments. Alimony, on the other hand, is tax deductible to the payor and is considered taxable income to the recipient.

There are several types of alimony in New Jersey:

Reimbursement Alimony is seldom used but is designed to reimburse one of the spouses for their "investment" in the other spouse's career or earning capacity. It is designed to address the situation in which one of the spouses contributed to the college or graduate school expenses of the other, and the marriage terminates before the financial benefits of the enhanced education can be realized. The intent is to repay the person for their contributions to the other party's education or career training.

Rehabilitative Alimony is alimony that is designed to enable the recipient to "rehabilitate" their career. If, for example, one of the spouses has interrupted their career to be a stay-at-home parent and now needs additional education, recertification or licensing in order to return to their employment, rehabilitative alimony may be appropriate to sustain their living expenses or to cover their educational expenses until they are able to return to their prior career.

Limited Duration Alimony is alimony which is paid for a defined period of time and applies to marriages of 20 years or less. In order to award Limited Duration Alimony, the Court must make a finding that permanent alimony is not warranted because of the length of the marriage, the parties' incomes, or other factors. After reaching the conclusion that Open Durational Alimony is not warranted, the Court may then award Limited Duration Alimony in a specific amount for a designated length of time. Once awarded, the length of the term itself may not be extended, although the amount may be modified.

Open Durational Alimony is payable until the death of either party, the re-marriage of the recipient, the cohabitation of the recipient with an unrelated third party or a "substantial change of circumstances" which would warrant a modification of either the amount or a termination of payment entirely, such as good faith retirement at the appropriate age.

Other instances of "substantial change of circumstances" may include a significant increase in a party's income, a significant decrease in a party's income, or a medical condition. In determining both the type and amount of alimony, the Court must consider specific factors, including:

1. the needs of the recipient and/or payor;
2. the ability of the payor to make the payments;
3. the duration of the marriage;
4. the parties' age;
5. the parties' physical and emotional health;
6. the standard of living established during the marriage;
7. the earning capacity, the educational levels and employability of each of the parties;
8. the length of absence from the job market of the recipient party;
9. each party's parental responsibilities for the unemancipated children;
10. the time and expense necessary to acquire sufficient training or education in order to return to the employment market;
11. the history of financial or non-financial contributions to the marriage by each party;
12. the amount of equitable distribution by either party and, specifically, the income which such equitable distribution may generate to each of the parties;
13. an unearned or investment income;
14. the tax consequences of the alimony.

It is often said that both the recipient and the payor of the alimony should be able to enjoy the "standard of living which was established and maintained during the marriage."

However, that concept is much more of a guidepost than an attainable reality in most cases. In all but an extraordinarily high income family, it is simply impossible for both parties to maintain the same standard of living that was enjoyed by them during the marriage. In the vast majority of cases, both parties will have to compromise their marital lifestyle. It is simply arithmetically impossible to divide the post-divorce income into two family units and have each of the units equal the prior single family unit lifestyle.

There are very important principles of law which address the situation in which a payor's income increases after the divorce. The application of those principles requires an in depth review by a competent Divorce Attorney. However, the general concept is that the recipient of alimony is only entitled to enjoy the lifestyle and thus receive alimony based upon the payor's income during the marriage and at the time of the divorce. They are not entitled to share income increases, which occur after the dissolution of the marital partnership and without contribution or support from the recipient spouse.

On the other hand, if the parties' financial circumstances at the time of the divorce do not enable the recipient spouse to be supported at the standard of living which was enjoyed during the marriage, and the payor's post-divorce income rises to a level that then enables a payment which would maintain the marital standard, a post-divorce increase in the amount of alimony may be warranted.

For more information on this topic, please contact Megan Smith at msmith@offitkurman.com.