

# Cohabitation Issues

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## Cohabitation Under New Jersey Alimony Laws

Cohabitation is an issue which is of significant consequence to any alimony obligation or entitlement. The issue is implicated when any alimony payee (the spouse receiving alimony) enters into a relationship with a third-party which meets the criteria for “cohabitation.” On September 10, 2014, New Jersey amended its alimony statute to clarify the definition of cohabitation. The amended statute provides that “cohabitation involves a mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union but does not necessarily maintain a single common household.” [N.J.S.A. 2A: 34-23\(n\)](#).

The text of the statute sets forth various factors that must be analyzed to determine whether cohabitation is occurring, such as but not limited to:

- The extent to which the couple has intertwined finances
- Whether the couple shares joint responsibilities for living expenses
- The frequency of contact between the couple
- The duration of the relationship
- The extent to which the couple resides together in the same home

However, the statute further clarifies that “a Court may not find an absence of cohabitation solely on grounds that the couple does not live together on a full-time basis.” [N.J.S.A. 2A: 34-23\(n\)](#). As a result, cohabitation may be found even if the couple does not reside under the same roof on a full-time basis if there are other sufficient indications of cohabitation.

Prior to the amendment of the New Jersey alimony statute the consequence of a finding of cohabitation was that the court would undertake what was known as an “economic needs test.” The purpose of that test was to assess the financial benefit of the cohabitation to the alimony payee and the resulting decrease to the alimony payee’s need for alimony. The extent of the reduction to the alimony payee’s

need for alimony would then dictate the degree to which the alimony payor would be entitled to a reduction to his or her alimony obligation.

Since the passage of the amended alimony statute, however, the consequence of cohabitation is far more severe. Under current New Jersey law, if the alimony payee is found to be cohabiting, the payor's alimony obligation must be either "suspended or terminated." New Jersey law no longer allows for a reduction of alimony on the basis of the aforementioned "economic needs test." Now, regardless of the degree to which the alimony payee benefits from his or her cohabitation, if at all, alimony must be either suspended or terminated.

## Negotiating Alimony Issues under New Jersey's Amended Alimony Statute

Because the consequence of cohabitation can be momentous, it is critical that the possibility of future cohabitation be taken into account when negotiating the issue of alimony. As an example, a supported spouse who believes that he or she is likely to cohabit down the road may wish to negotiate for an alimony arrangement that will be non-modifiable in the future on the basis of cohabitation. A settlement agreement which provides for such a non-modifiable alimony arrangement is enforceable and serves as a means of superseding the statutory requirement of a suspension or termination of alimony in the event of cohabitation.

The consequences of a future cohabitation are equally important to the alimony payor, as he or she may be entitled to suspend or terminate the alimony obligation sooner than would otherwise be possible as a result of the payee's cohabitation. That possibility must be taken into consideration by the alimony payor when negotiating the original alimony obligation. For example, the alimony payor may be able to negotiate for a lesser alimony obligation by agreeing that such obligation cannot be modified in the future on the basis of the alimony payee's cohabitation.

Cohabitation implicates countless other considerations when negotiating the issue of alimony and performing post-divorce financial planning. It is therefore important that anyone seeking alimony or

defending against an alimony claim retain a New Jersey family law attorney who is experienced and knowledgeable with regard to cohabitation issues so that the appropriate legal strategy will be adopted. It is also equally important for anyone who is already receiving or paying alimony to consult with an experienced attorney before an issue of cohabitation arises so that appropriate planning may be undertaken.

If you have questions related to alimony claims and cohabitation, we encourage you to discuss your situation with one of the many excellent New Jersey divorce attorneys in our firm. We have substantial experience guiding clients through complex alimony matters and will work with you to ensure that the appropriate measures are put into place to protect you today and into the future.