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MARCH 7, 2016

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Alimony reform in New Jersey: Here's a primer

Act passed in 2014 has big impact during (and after) settlements

BY DARIA MEOLI

Last month, a Morris County man went before Superior Court Judge **Maritza Berdote Byrne** seeking to terminate his alimony obligations to his ex-wife on the grounds that she is now cohabitating with another man.

The case hinges on the definition of cohabitation.

In the courts, the criteria of cohabitation are not as black and white as having the same mailing address. If an alimony recipient maintains his or her place of residence, yet regularly spends nights, goes on vacations and celebrates holidays with a new romantic companion and partakes in other activities generally considered to be matrimonial-like, that relationship could impact alimony.

The Morris County case is just one of many that will invoke the 2014 Alimony Reform Act. Prior to the act, cohabitation was not defined.

Under the amended statute, an alimony payer doesn't necessarily have to prove that the ex-spouse is living with a new partner, just that he or she is in a "mutually supportive relationship."

"(Before the act), the statute lacked a clear definition of cohabitation," said **Thomas Snyder**, family law attorney with the Denville-based firm of **Einhorn Harris** and attorney for the husband in the Morris County case. "Courts and litigants were getting into a quagmire of: 'Is this person really cohabitating or is this just a dating relationship?' It became contracted and convoluted litigation."

On the flip side, many litigants and attorneys are concerned that people will be afraid to date after their marriage ends because any type of romantic relationship could put their alimony in jeopardy.

While this amendment has been on the books for more than a year, it is now gaining traction among litigants.

"I don't think the general public is aware that the alimony law was so significantly modified," Snyder said. "The changes to the state statute for alimony will affect people who are not only in matrimonial litigation presently, but also people who were previously divorced and have alimony arrangements in their divorce agreement."

Beyond the cohabitation conundrum, the law altered the alimony statute in our state in three additional, substantial ways.

First, the act did away with what was



Thomas Snyder, family law attorney, Einhorn Harris, PC. -AARON HOUSTON

The new rules around alimony

The Alimony Reform Act of 2014 helped define 'cohabitation' as people who are in a 'marital relationship,' whether they are physically living together or not. But that's just one way it made an impact. Here are three others:

- 1 Permanent alimony:** It's now called 'open durational alimony' and essentially means the length of time a spouse needs to pay alimony is determined on a case-by-case basis.
- 2 Changes in alimony obligations:** Specifically, it takes financial implications, such as retirement, into account when people petition for a reduction in their alimony payment.
- 3 Unemployment in alimony:** A person who loses a job can petition for a reduction in alimony payment after 90 days of unemployment, rather than waiting to get another job.

commonly known as permanent alimony and changed it to "open durational alimony." This essentially means the duration of time an ex-spouse has to pay alimony is determined on a case-by-case basis for marriages that last 20 years or more. For marriage ending in less than 20 years, the duration of the alimony should not exceed the length of the marriage unless there are exceptional circumstances.

It's the first time the courts have been provided with criteria for defining the duration of alimony obligation. Before, if a couple divorced after 12 years of marriage, a spouse could have to pay what was once called "permanent alimony." In other cases, the ex might have to pay alimony for twice the duration of the marriage.

"This will probably be one of the most significantly litigated aspects of the amendment," Snyder said. "We know this

is what the law says, but the question becomes for whom does this amendment apply? Like all other aspects of matrimonial law, nothing is ever black and white."

Second, the act changed the circumstances under which alimony obligations could be changed. Specifically, the act takes into account the financial implications of retirement and allows for alimony payers to petition to have their payment obligations reduced or terminated after leaving their careers.

The alimony statute was modified to say that, upon a good faith retirement, alimony could end or be reduced.

And lastly, the act addressed loss of employment. Under the case law that existed before the Alimony Reform Act of 2014, a job loss was considered temporary and the court would not amend an alimony obligation until the spouse got a

subsequent job.

"That was relying on a case that was nearly 40 years old, and the economic realities of today are such the people cannot sustain standard of living with loss of employment," Snyder said. "Now, an ex responsible for alimony payments who loses a job may petition the court for a reduction after 90 days (without employment)."

Back in the Morristown courthouse, both attorneys have pleaded their cases and the former couple awaits a decision. While many of the people with alimony obligations around the state will undoubtedly be very interested in the outcome of this case, a ruling in either favor won't define cohabitation for everyone else.

"With the new standards in how alimony should be modified in the case of cohabitation, you will see a lot of litigation, which is going to create different results for different people," Snyder said. "In my experience, that is a frustration among many litigants in matrimonial law. There is a lack of consistency in resolution of issues because it is a court of equity and the court has discretion in terms of making decisions on judgments.

"How particular judges apply the statute and the particular facts of the cases will create a wide variety of decisions."

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