

## **Alimony and You: Perfect Together?**

Jan L. Bernstein, Esq.

Did you know that there were different types of alimony? In fact, there are four distinct types of alimony that can be awarded pursuant to a divorce. This article is a guide to the types of alimony that can be awarded or agreed upon in New Jersey. New Jersey law provides for four basic types of alimony, namely: permanent alimony; rehabilitative alimony; limited duration alimony; and reimbursement alimony. Unless, specifically designated otherwise, all alimony is taxable to the recipient and deductible by the payor. When determining alimony, thirteen statutory factors are considered. Pursuant to the statute, *N.J.S.A. 2A:34-23*, these factors are as follows:

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 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 of the parties seeking maintenance (alimony);
7. The parental responsibilities for the 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 payouts on equitable distribution, directly or indirectly, or out of current income, to the extent this consideration is reasonable, just, and fair;

11. The income available to either party through investment of any assets held by that party;
12. The tax treatment and consequences to both parties of any alimony award, including designation of all or a portion of the payment as a non-taxable payment; and
13. Any other factors which the court may deem relevant.

Permanent alimony is typically awarded in marriages of long duration or in circumstances where one spouse is especially financially dependent upon the other. It is important to note that permanent alimony does not necessarily mean that alimony lasts for the rest of one's life. Permanent alimony will continue to be paid until the occurrence of a terminating factor, which may be agreed upon by the parties or ordered by the court. Examples of terminating factors include, but are not limited to the following: the remarriage of the payee spouse; the death of the payee spouse; cohabitation of the payee spouse in a relationship tantamount to a marriage; or the death of the payor spouse. Also, the parties can negotiate the termination of alimony upon the retirement of the payor spouse. Permanent alimony can be modified based upon a showing of a change in circumstance. Examples of a change in circumstance include, but are not limited to the following: a significant change in the payor's income; long term or permanent unemployment of the payor; or a significant increase in the payee's income.

Rehabilitative alimony is intended to rehabilitate the payee spouse and bring that spouse to a point where she or he is able to achieve financial independence. To be awarded rehabilitative alimony, the payee spouse must put forth a plan for his or her rehabilitation. Such a plan must include the following: the steps which will be taken to achieve rehabilitation; and the time frame which shall include a period of employment during which the rehabilitation occurs. Rehabilitative alimony can be modified upon a showing of a change in circumstances. Generally, rehabilitative alimony will continue until the payee spouse is rehabilitated. Remarriage does not terminate rehabilitative alimony.

Reimbursement alimony is alimony awarded under circumstances where one party supported the other through an advanced education in anticipation of participation in fruits of the earning capacity generated by that education. Reimbursement alimony is based on the amount of money spent by the supporting spouse at the time, and not on the enhanced future earning capacity of the other spouse. Remarriage does not terminate reimbursement alimony.

Limited duration alimony is alimony awarded for a set period of time. It is important to note that limited duration alimony can be modified based upon a change in circumstances. However, a court can only modify the amount of the limited duration alimony award. It cannot modify the length of the term except in unusual circumstances. As with permanent alimony, remarriage of the payee spouse will terminate the payor spouse's alimony obligation.

Although death of the payor spouse terminates all types of alimony, it is best to require the payor spouse to obtain life insurance equal to the estimated total amount of alimony to be paid. This will ensure that the payee spouse receives all of the alimony due to her or him if and when the payor spouse dies.

Whether you are attempting to negotiate an agreement with your attorney or whether you find yourself preparing for trial with your attorney, it is important to keep in mind the different types of alimony and the factors considered in determining alimony. Also, it is important to consider your own circumstances as they relate to the factors set forth above. Divorce can be a long and trying process. It helps to have the guidance and knowledge of a seasoned attorney to ensure that your rights are protected.