

## Will your ex's cohabitation end your alimony obligation?



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Have you had this happen – a client complains that their ex is now living with a new boyfriend or girlfriend and asks if they can terminate their alimony payments? If so, you probably know that the answer is the attorney's favorite adage – “it depends.”

Under Maryland law, unless the parties expressly agree otherwise, alimony automatically terminates upon the death of either party, the marriage of the recipient, or if the court finds it necessary to terminate alimony “to avoid a harsh and inequitable result.”

In this scenario, the key words in responding to the client's question are “the marriage of the recipient.” Does the fact that the former partner now resides with a new partner count as remarriage under the statute? Unless the parties have previously agreed otherwise, the answer is most likely “no.”

The courts have held that the phrase “marriage of the recipient” does not extend to persons living in a “marriage-type relationship.”

In *Mendelson v. Mendelson*, the Court of Special Appeals described remarriage as obtaining a marriage license and undergoing a marriage ceremony. Relationships with “all the attributes of marriage” do not amount to marriage.

Unfortunately, this leaves the payor spouse on the hook for spousal support in spite of the fact that their ex is now sharing expenses and other benefits with a new partner. So, what can the client do?

You should start by asking your client whether they entered into a prenuptial and/or separation agreement relating to spousal support payments. If such an agreement is in place, a careful review of those provisions is warranted before considering next steps.

Prenuptial and separation agreements frequently contain language that spousal support is terminated upon the remarriage or cohabitation of the receiving spouse. Where this gets tricky is whether and how cohabitation is defined.

The preeminent case on the definition of cohabitation is *Gordon v. Gordon*. There, the Court of Appeals was tasked with examining the term “cohabitation” as used in a separation agreement relating to spousal support. The court ultimately concluded that “‘cohabitation’ implies more than merely a common residence or a sexual relationship.”

The court went on to develop a non-exhaustive guide for trial courts to consider in determining whether parties are cohabiting, including: “(1) establishment of a common residence; (2) long-term intimate or romantic involvement; (3) shared assets or common bank accounts; (4) joint contribution to household expenses;

and (5) recognition of the relationship by the community.”

The court further explained that the term “cohabitation” (or an analogous term) contained in a spousal support agreement will be interpreted under the above-referenced factors unless the parties indicate another meaning. Parties are also, of course, mostly free to expand upon or modify the definition of cohabitation within their own spousal support agreements.

This was recently reaffirmed in *Rose v. Rose*. The Court of Special Appeals held that the lower court properly applied the five factors set forth in *Gordon* in finding that the receiving spouse's significant romantic relationship did not constitute cohabitation under the terms of the agreement, which had expressly adopted the *Gordon* factors, even where there was cohabitation and a long-term intimate relationship but where the other factors were not satisfied.

Absent such an agreement and a finding that the receiving spouse is cohabiting, the only other real viable avenue of attack is petitioning the courts under the “harsh and inequitable result” and asking the court to examine the receiving party's financial circumstances to determine whether alimony should be terminated or modified.

This is why it is so important to keep these factors in mind when negotiating a client's prenuptial or separation agreement. Their requirement to pay and ability to receive may hinge on the definition of cohabitation.

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