



## Cohabitation and Its Impact on Spousal Maintenance

By Kathy Newman

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**M**ost couples want to believe that once their divorce is final they will never have to see or deal with their ex-spouse again. In many cases that simply is not true. There are several highly emotional and complex issues divorced couples have to cope with and manage long after their divorce is final. Outside of the children, no issue is more emotional or contested than spousal maintenance, commonly referred to as alimony.

**It is easy to understand why spousal maintenance is such a hot button issue for divorcing couples; each party is at the opposite end of the spectrum. The high earning spouse does not want to support his/her ex-spouse after the divorce. The lower earning spouse wants to receive a future benefit from their years of sacrifice and labors of love, which is often times goes unnoticed. Our legal system is set up to deal with this issue on a case-by-case basis.**

*How is a spousal maintenance award modified when cohabitation becomes a factor?*

The issue of cohabitation is not new. The Minnesota Supreme Court has well established case law surrounding cohabitation arrangements dating back almost 50 years. However, the issue of spousal maintenance modification due to a cohabitation arrangement is back on the minds of many family law attorneys as a result of proposed legislative changes to the modification statute currently in the Minnesota House of Representatives, H.F. No. 133.

Spousal Maintenance continues to be one of the most difficult and gray areas family law. Simplistically, the amount and duration of a spousal maintenance award is based on a determination that one party needs spousal support in order to meet a marital standard of living and the other party has the ability to pay spousal support, while meeting their own needs. If the court feels that the requesting spouse can become self-supporting after retraining or with on the job experience, the spousal maintenance award is made for a specific term of years. Spousal maintenance usually terminates on the death of either party or the recipient's remarriage.

A spousal maintenance award can be modified on a motion of either party pursuant to Minn. Stat. § 518A.39. In order for modification to occur, the court must determine that, based on the statutory criteria, the existing spousal maintenance order is unreasonable and unfair.

The two most common modification circumstances occur when there has been a substantial change in the income of either party or a substantial change in the financial needs of either party. The Minnesota Supreme Court has made it clear that "cohabitation, by itself, 'is insufficient to justify the termination of alimony,' but that a maintenance recipient's cohabitation should be considered to the extent that it 'might improve [the recipient's] economic well-being.'" *Spencer v. Larson* quoting *Mertens v. Mertens*.

### *Proposed Legislative Change to the Modification Statute*

The Minnesota House of Representatives proposed bill number 1333, if passed into law, would modify Minn. Stat. § 518A.39 subd. 3 to include cohabitation as a circumstance that would, if proven, suspend or terminate a spousal maintenance award. Specifically, it provides that "the obligation to pay future maintenance shall be suspended or terminate upon evidence that the party receiving maintenance cohabitates with another individual." The proposed legislation lists seven factors the court should consider when making a determination, including joint financial, shared living expenses, recognition of relationship by family and friends, living arrangements, duration of relationship, enforceable promise of support from another person, and other relevant evidence. However, a court is barred from finding an absence of cohabitation solely on the grounds that the ex-spouse and cohabitant maintain separate residences or do not live together on a full-time basis.

The family law community is divided on this issue. Those in favor are concerned the party receiving spousal maintenance will not remarry because they do not want to lose their spousal maintenance. Instead of remarriage, the ex-spouse may live with a significant other as if they are married. In essence forcing an ex-spouse to support their ex-spouse's relationship. Many proponents do not believe the bill is complete and are advocating for a very tight bill that would apply to limited situations.

Those opposed see many issues even if the bill were to be more tightly construed. Current case law already requires district courts to make adequate findings regarding the economic impact of cohabitation relationships when modifying maintenance. The proposed legislation only allows for suspension or termination of spousal maintenance. In other words, contrary to current law, the economic impact of the cohabitation relationship would be irrelevant.

The legislation does not state that a romantic relationship is required for cohabitation, potentially allowing a roommate or an adult child to qualify as a cohabitant. However, the legislation may imply a romantic relationship is needed because it specifically states that maintaining a separate residence does not equate to an absence of cohabitation. The legislation is also silent regarding a specific time duration, just that it is a factor. This opens the door to how time will be measured: days, weeks, months, years?

Finally, opponents ask how evidence is going to be obtained. Are the obligors going to hire private investigators to track how many overnights the ex-spouse's significant other stays or snoop around to check whether the significant other is receiving mail at the ex-spouse's residence, as was the case in *Hopf v. Hopf*. More sinister, are joint children going to be asked to spy on their parents?

### *Where is the Bill*

H.F. No. 1333 has a long way to go before it becomes law. As of the writing of this article, the bill has not yet passed through the civil law or public safety committees and there is not a companion bill in the Minnesota Senate. Therefore, it seems unlikely H.F. No. 1333 will be put to a vote during the 2015 legislative session but there is still several days for this bill to be heard and make its way to law yet this year.