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REVIEW OF ALIMONY PAYMENTS

SUMMARY

A minority of jurisdictions statutorily provide for an automatic termination of alimony payments upon a showing of cohabitation on the part of the recipient. More common are laws that authorize a court to terminate payments where cohabitation has led to an attendant change in financial circumstances. Although Florida statutes do not expressly address the issue of cohabitation and alimony payments, a payor is authorized to petition the court where there is a change in financial circumstance, which could include cohabitation by the recipient of alimony. Reflecting a greater percentage of women in the workforce, permanent alimony awards have declined significantly over time, replaced to a large extent with awards of short-term rehabilitative alimony, or hybrid awards that serve to compensate a spouse for certain contributions. Settlement agreements in divorce cases increasingly contain cohabitation clauses. At least one court in Florida has upheld such a clause without consideration of a financial change in circumstances. Requiring termination of alimony upon a showing of cohabitation does mirror the law in some other jurisdictions but ultimately may not result in significant change, due to the changing landscape of marriage and types of alimony and dissolution agreements.

spouse's needs with the supporting spouse's ability to pay, in light of the standard of living enjoyed during the marriage.² The court orders alimony as a lump sum, or through periodic payments.³ Courts now favor rehabilitative or transitional alimony over permanent periodic alimony, as it encourages self-sufficiency.⁴ Although permanent, periodic alimony is usually considered where there is a dependent spouse, it can also be ordered to balance inequities from the division of property.⁵ Lump sum alimony can also be ordered to correct inequities from property division.⁶ Permanent alimony generally ends when either party dies or when the recipient remarries.⁷ Alimony may be revisited when the need and ability to pay changes significantly, and modifications usually apply prospectively.⁸

The History of Divorce and Alimony

The women's voting rights movement of the 19th century paved the way for other freedoms, such as the right to divorce. Still, "divorce remained difficult or impossible to get in many jurisdictions."⁹ Prior to the late 1960's, studies showed that women who divorced typically experienced an instant and severe decline in their quality of living, while men enjoyed a rapid increase.¹⁰ To get divorced at all, at least one of the parties was required to show fault, usually in the form of adultery, mental illness, physical abuse, or substance abuse.¹¹ Starting in the late 1960's, no-fault divorce legislation was introduced and passed in many states, as a replacement to requiring fault as the basis for

BACKGROUND

Traditionally, alimony was more often awarded to a woman based on the premise that she was the dependent spouse, having foregone or sacrificed career opportunities to fulfill the dual role of homemaking and child rearing. Today, alimony is considered to be gender-neutral.¹ In cases where alimony is considered, the amount is assessed by balancing the dependent

¹ Alyson F. Finkelstein, *A Tug of War: State Divorce Courts Versus Federal Bankruptcy Courts Regarding Debts Resulting From Divorce*, 18 Bankr. Dev. J. 169, 171 (2001).

² Sheryl L. Scheible, *Bankruptcy and the Modification of Support: Fresh Start, Head Start, Or False Start?*, 69 N.C. L. Rev. 577, 583-584 (1991).

³ *Id.* at 585.

⁴ *Id.* at 589.

⁵ Victoria M. Ho and Jennifer L. Johnson, *Overview Of Florida Alimony*, 9 Fla.B.J. 71 (October 2004).

⁶ *Id.*

⁷ Scheible, *supra* note 2, at 585.

⁸ *Id.* at 586.

⁹ Katharine T. Bartlett, *Feminism and Family Law*, 33 Fam.L.Q. 475, 478 (1999).

¹⁰ *Id.* at 480.

¹¹ Finkelstein, *supra* note 1, at 171.

divorce.¹² The advent of no-fault divorce served as a precursor to alimony reform.¹³

In 1970, the Uniform Marriage and Divorce Act (UMDA) proposed that the following be subject to just distribution in consideration of the circumstances of the marriage:

All property acquired by either spouse after the marriage and before a decree of legal separation...regardless of whether title is held individually or by the spouses in some form of co-ownership.¹⁴

States have either adopted the original version of the UMDA and authorize division of marital property only, or, as in Florida, follow the revised version which includes non-marital property when equity requires.¹⁵

From 1975 through 1996, states passed legislation to continue to equalize the quality of living between former spouses and included significant steps to more actively enforce child support.¹⁶

Changes in Alimony Awards

Although awards of permanent alimony were fairly common a generation ago, today they are generally restricted to rehabilitative, or short-term, maintenance.¹⁷ This type of alimony is intended to encourage the recipient's independence.¹⁸ Among female recipients, alimony is typically distributed to the following:

- Women with custody of young children;
- Women in need of transitional support; and
- Older displaced homemakers who are not easily self-sufficient.¹⁹

In many jurisdictions, the term alimony has been replaced by "maintenance" or "support".²⁰ Some states limit the term of maintenance. By way of example, Texas generally limits maintenance payments to no longer than three years.²¹ In addition, a presumption is

created in Texas law against the award of maintenance unless the spouse has proven certain conditions.²²

A new type of alimony has also emerged in certain jurisdictions, which authorizes reimbursement, or restitution alimony, to compensate a spouse for contributions to the other's education or career advancement.²³ Bases proposed by the American Law Institute for the award of these payments include:

- The loss in standard of living due to dissolution by the spouse who has less wealth;
- An earning capacity loss incurred during marriage from one spouse's disproportionate share of child care or from care given to a sick, elderly, or disabled third party;
- The loss incurred upon dissolution before a spouse can realize a fair return from investing in the other spouse's earning capacity;
- An unfair disparity between spouses in their capacity to regain their premarital standard of living after dissolution of a short marriage.²⁴

2004 Florida Constitutional and Legislative Proposals

A citizen's initiative petition titled "Abolition of Alimony Obligations" was filed in 2004.²⁵ The ballot summary described the proposed amendment as follows:

This amendment modifies Article I of the Florida Constitution by providing that no person whose marriage has been legally dissolved in the state is subject to any type of alimony obligation as part of dissolution of marriage. The state would no longer recognize "alimony" which was historically based on the obligation of the husband to support his wife. This amendment recognizes the state constitutional rights of both husband and wife to privacy and equal protection.²⁶

Petition language provides for retroactive application.²⁷ Although the petition remains active, signatures have not been submitted to the Attorney General.²⁸

¹² Bartlett, *supra* note 9, at 478.

¹³ *Id.* at 482.

¹⁴ Laura Weinrib, *Reconstructing Family: Constructive Trust At Relational Dissolution*, 37 Harv. C.R.-C.L.L.Rev. 207, 217-218 (2002).

¹⁵ *Id.* at FN 55.

¹⁶ Bartlett, *supra* note 9, at 480-481.

¹⁷ Weinrib, *supra* note 14, at 218.

¹⁸ *Id.*

¹⁹ Finkelstein, *supra* note 1, at 173.

²⁰ *Id.*

²¹ TEX. FAM. CODE ANN, Chapter 8, Section 8.054.

²² TEX. FAM. CODE ANN, Chapter 8, Section 8.053.

²³ Finkelstein, *supra* note 1, at 174.

²⁴ Ho, *supra* note 5, at 71.

²⁵ The petition was filed by Citizens for Liberty and Privacy; see the Division of Elections, Florida Department of State website: <http://election.dos.state.fl.us>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

A bill was filed during the 2004 Legislative Session which required a termination of payment of alimony where the court reaches the following findings:

- The alimony recipient has entered into a de facto marriage, defined as a marriage in which the parties live together as husband and wife under color of validity but is otherwise defective for reasons of form; or
- The alimony recipient is cohabiting with a person of the opposite sex in a manner similar to a previously recognized common law marriage.²⁹

This bill died in committee and did not have a House companion.

The term “de facto marriage” in the proposed legislation is defined in Black’s Law Dictionary as follows:

A marriage in which the parties live together as husband and wife under color of validity but which is defective for reasons of form, etc.³⁰

The term “common law marriage” in the proposed legislation is defined in Black’s Law Dictionary as one that is not solemnized through a ceremony, but created through an agreement to marry, followed by cohabitation, to include an assumption of marital duties and obligations.³¹

Florida Statutes on Dissolution of Marriage and the Award of Alimony

Chapter 61, Florida Statutes, addresses dissolution of marriage. Purposes of this chapter include promoting the amicable settlement of disputes arising in marriage, and mitigating potential harm to the spouses and their children as a result of a legal dissolution of marriage.³²

Procedure for Obtaining a Dissolution of Marriage

One of the parties must reside in the state for 6 months prior to the filing of the petition.³³ The circuit court is the initial court of jurisdiction for receiving petitions for dissolution of marriage.³⁴

To obtain a judgment of dissolution of marriage, one or

both parties must plead that the marriage is irretrievably broken or that mental incapacity exists on the part of a spouse, supported by an adjudication of incapacity for at least the last 3 years.³⁵

Where there is no minor child of the marriage, and the responding party does not deny that the marriage is irretrievably broken through answer to the petition, the court is required to enter a judgment of dissolution of the marriage if the court finds that the marriage is irretrievably broken. Otherwise, the court is authorized to order either or both parties to consult with a counselor, religious clergy, or others, continue the proceedings for up to 3 months, or take other actions in the best interest of the parties and minor children of the marriage.³⁶ During periods of continuance, the court is authorized to enter orders for support and alimony.³⁷

Determination of Alimony

In determining the amount, if any, to be awarded for alimony, income to be considered is defined as:

Any form of payment...regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker’s compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government....United States Department of Veterans Affairs disability benefits and unemployment compensation...are excluded from this definition of income except for purposes of establishing an amount of support.³⁸

Florida law provides for allocation of assets based on equitable distribution, such that the court is required to premise its allocation based on an equal distribution of marital assets and liabilities. The court is required, however, to consider the following as justification for departure from equal distribution:

- The contribution to the marriage by each spouse, including care and education of children and other homemaker services;
- The financial situation of the parties;

²⁹ Senate Bill 1416, Prefiled 1/7/04.

³⁰ Black’s Law Dictionary, 6th ed. (1990).

³¹ *Id.*

³² s. 61.001, F.S.

³³ s. 61.021, F.S.

³⁴ s. 61.043(1), F.S.

³⁵ s. 61.052(1), F.S.

³⁶ s. 61.052(2), F.S.

³⁷ s. 61.052(3), F.S.

³⁸ s. 61.046(7), F.S.

- The duration of the marriage;
- Any interruption or contribution of careers or educational opportunities of either party;
- The interest in retaining any asset in a business;
- The contribution of each spouse to the acquisition, enhancement, and production of income or improvement of, or the incurring of liabilities to, both the marital assets and the non-marital assets of the parties;
- The interest in retaining the marital home as a residence for any dependent child of the marriage;
- The intentional destruction or dissipation of marital assets after the filing of the petition or within two years of its filing; and
- Any other factors to do justice and equity between the parties.³⁹

Where the court awards a cash payment, in full or in installments, the full amount vests when the judgment is awarded and the award is considered a debt that does not terminate upon remarriage or death of either party, unless otherwise agreed to by the parties.⁴⁰

Marital assets and liabilities include:

- Assets acquired and liabilities incurred during marriage, individually by either spouse or jointly by them;
- The enhancement in value and appreciation of non-marital assets resulting during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both;
- Interspousal gifts during the marriage;
- All vested and non-vested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs; and
- All real property held by the parties as tenants by the entireties, acquired prior to and during the marriage.⁴¹

All assets acquired and liabilities incurred by either spouse after the date of marriage and not specifically established as non-marital assets or liabilities are presumed to be marital assets and liabilities.⁴² The

court is authorized to provide for equitable distribution without awarding alimony, but is required to consider alimony after its determination of equitable distribution.⁴³

Alimony may be rehabilitative or permanent in nature, through periodic payments or payments in lump sum, or both. The court is authorized to consider the adultery of either party in determining the amount of alimony.⁴⁴

In determining a proper award of alimony or maintenance, the court is required to consider all relevant economic factors, including:

- Standard of living established during the marriage;
- Duration of the marriage;
- Age and physical and emotional condition of each party;
- Financial resources of each party, the non-marital and marital assets and liabilities;
- Time needed for acquiring sufficient education or training;
- Contribution of each party to the marriage, such as homemaking, child care, education, and career building of the other party;
- All sources of income; and
- Any other factor necessary to do equity and justice between the parties.⁴⁵

Modification of Alimony

When the circumstances or financial ability of either party changes, either party is authorized to petition the court to modify the amount of alimony.⁴⁶ The court is then granted discretion to enter an order decreasing or increasing the amount of alimony. If alimony is changed, the court may apply the modification retroactively to the date of the filing of the action, based on what is equitable.⁴⁷ The court may enter a modification order regardless of whether the party applying for it has fully paid the accrued obligations to the other party at the time of the application or modification.⁴⁸ When a modification order is entered, the new order is transferred to the original court of jurisdiction, and becomes a part of the original action.⁴⁹

³⁹ s. 61.075(1), F.S.

⁴⁰ s. 61.075(2), F.S.

⁴¹ s. 61.075(5)(a), F.S.

⁴² s. 61.075(7), F.S.

⁴³ s. 61.075(8), F.S.

⁴⁴ s. 61.08(1), F.S.

⁴⁵ s. 61.08(2), F.S.

⁴⁶ s. 61.14(1)(a), F.S.

⁴⁷ *Id.*

⁴⁸ s. 61.14(2), F.S.

⁴⁹ s. 61.17(1), F.S.

METHODOLOGY

Staff researched statutes, case law, periodicals and laws in Florida and other states relating to modification of alimony. Staff additionally contacted interested parties.

FINDINGS

A few states provide for an automatic termination of alimony upon a showing of cohabitation. More often than not, states that address cohabitation in alimony statutes authorize, rather than require, the court to terminate or modify alimony. Some states provide for a rebuttable presumption in law that a change in financial circumstances occurs when there is cohabitation.

Anti-Cohabitation Statutes in Other States

Several states have passed laws that authorize modification or termination of alimony payments upon a showing that the recipient former spouse is living with or cohabiting with another person. These states include the following: California, Connecticut, Georgia, Illinois, Oklahoma, New York, South Carolina, Tennessee, Utah, and West Virginia.⁵⁰ Of these, some authorize modification but not termination, such as California, Connecticut, Georgia, Oklahoma, and Tennessee.⁵¹ Some states automatically terminate alimony upon a showing of cohabitation, such as in Alabama, Louisiana, and Texas.⁵² A showing of cohabitation creates a rebuttable presumption that financial circumstances have changed in states such as California and Tennessee.⁵³ In Pennsylvania, although alimony is precluded in statute where the recipient is cohabiting with a third person, courts have allowed it to continue if the dissolution agreement does not contain a cohabitation clause.⁵⁴

States That Authorize Modification or Termination of Alimony

Connecticut

Connecticut law authorizes the court to modify a final judgment and to:

Suspend, reduce or terminate the payment of periodic alimony upon a showing that the party

⁵⁰ *Pattberg v. Pattberg*, 130 Misc.2d 893, 497 N.Y.S.2d 251, 254 (1985).

⁵¹ *Id.* at 895.

⁵² *Id.* at 895.

⁵³ Carolyn Sievers Reed, *Alimony Modification and Cohabitation in North Carolina*, 63 N.C.L.Rev. 794 (1985).

⁵⁴ *See, e.g., Miller v. Miller*, 48 Pa. D. & C.3d 211 (1987).

receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party.⁵⁵

Georgia

Georgia law provides that the voluntary cohabitation of a recipient can be a basis for modification of alimony payments.⁵⁶ Although Georgia law does not recognize automatic cessation of alimony in the event of cohabitation, parties are still free to contract for such an immediate result.⁵⁷

Illinois

Unless otherwise determined by the court, Illinois law requires a termination of alimony upon a showing that the recipient “cohabits with another person on a resident, continuing conjugal basis.”⁵⁸ Courts have interpreted “conjugal” to indicate a husband and wife type of relationship.⁵⁹

New York

New York law authorizes the court to cease payment of alimony upon a showing that a wife is habitually living with another man and holding herself out as his wife, without being married to him.⁶⁰

To prove that an alimony recipient is habitually living with another man, a payor is required to show that:

- The recipient had a relationship with someone of the opposite sex;
- The recipient was living with that person in a capacity other than that of a roommate or housemate; and
- Cohabitation was habitual.⁶¹

In reviewing an equal protection challenge to the statute, the New York Supreme Court upheld the cohabitation statute, but indicated that the phrase “habitually living with another man and holding

⁵⁵ CONN. GEN. STAT. Section 46b-86 (2004).

⁵⁶ GA. CODE ANN. Section 19-6-19(b) (2004).

⁵⁷ *Metzler v. Metzler*, 267 Ga.892, 485 S.E.2d 459, 461 (1997).

⁵⁸ ILL. COMP. STAT. Section 750-510(c) (2004).

⁵⁹ *In re Marriage of Sappington*, 106 Ill.2d 456, 478 N.E.2d 376, 381 (1985).

⁶⁰ N.Y. DOM. REL. LAW Section 248 (2004); To date, the Legislature has failed to make this provision gender-neutral.

⁶¹ *Markhoff v. Markhoff*, 225 A.D.2d 1000, 639 N.Y.S.2d 565, 567 (1996).

herself out as his wife' has previously given rise to some controversy and the question of what conduct on the part of the ex-wife was sufficient to satisfy the statute had long troubled the courts."⁶² Occasional contact does not suffice,⁶³ but a relationship of as little as six months has been determined to constitute habitual involvement.⁶⁴

Where the evidence showed that a recipient maintained an exclusive relationship with a member of the opposite sex and introduced him as her husband, and the third party listed his address at the recipient's house, was writing checks from an account with the recipient's address on it, and moved his personal effects into the recipient's residence, the court found that the facts showed sufficient cohabitation so as to warrant termination of alimony.⁶⁵

South Carolina

The South Carolina Legislature recently added continued cohabitation as an additional basis for termination of periodic alimony.⁶⁶ Continued cohabitation is defined as:

The supported spouse [residing] with another person in a romantic relationship for a period of ninety or more consecutive days.⁶⁷

West Virginia

The West Virginia Code provides:

In the discretion of the court, an award of spousal support may be reduced or terminated upon specific written findings by the court that since the granting of a divorce and the award of spousal support a de facto marriage has existed between the spousal support payee and another person.⁶⁸

In determining what constitutes a "de facto" marriage, the statute includes such considerations as:

- The extent to which the ex-spouse and the other person hold themselves out as a married couple;
- The period of time that the recipient has

resided with another person not related in a permanent residence;

- The extent to which financial assets are pooled;
- The extent to which the recipient and the third party support each other; and
- Whether the recipient and third party have jointly contributed in the purchase of property.⁶⁹

States That Mandate Termination of Alimony upon Proof of Cohabitation

Alabama

In Alabama, a former spouse's periodic alimony obligation automatically terminates when the receiving spouse remarries or cohabitates.⁷⁰ The Alabama Court of Civil Appeals has held that the term "periodic alimony", by definition, means that payments to a former spouse will terminate upon death, remarriage, or cohabitation.⁷¹ The Alabama Supreme Court has ruled that a payor's responsibility automatically ceases from the actual date that the recipient begins cohabitating with a third party.⁷² A payor is not eligible for reimbursement where he or she does pay, however.⁷³

Pennsylvania

To constitute cohabitation, the payor must prove two events: some permanency of relationship and more than occasional sexual activity.⁷⁴

Texas

Alimony terminates where the recipient cohabits with another person in a "permanent place of abode on a continuing, conjugal basis."⁷⁵ Also, alimony is limited to maintenance payments of generally no longer than three years.⁷⁶ Additionally, a presumption is created in Texas law against the award of maintenance unless the spouse has proven certain conditions.⁷⁷

⁶² *Pattberg*, 497 N.Y.S.2d at 894.

⁶³ *See Watson v. Watson*, 39 A.D.2d 660, 331 N.Y.S.2d 730 (1972).

⁶⁴ *See Bliss v. Bliss*, 107 A.D.2d 684, 487 N.Y.S.2d 26 (1985).

⁶⁵ *Markhoff*, 225 A.D. 2d at 1001, 1002.

⁶⁶ *Joye v. Yon*, 355 S.C. 452, 586 S.E.2d 131, 133 (2003).

⁶⁷ S.C.CODE ANN., Section 20-3-130(B)(1) (2002).

⁶⁸ W.VA.CODE Section 48-5-5707(a)(1) (2004).

⁶⁹ W.VA.CODE, Section 48-5-5707(a)(2) (2004).

⁷⁰ ALA. CODE Section 30-2-55 (2004) reads, in part: "Any decree of divorce providing for periodic payments of alimony shall be modified by the court to provide for the termination of such alimony upon petition of a party to the decree and proof that the spouse receiving such alimony has remarried or that such spouse is living openly or cohabiting with a member of the opposite sex." *See generally Heaston v. Nabors*, 2004 WL 596089 (Ala.Civ.App.).

⁷¹ *Wheeler v. Wheeler*, 831 So.2d 629 (Ala.Civ.App. 2002).

⁷² *Ward v. Ward*, 782 So.2d 1285, 1288 (Ala. S.Ct. 2000).

⁷³ *Id.* at 1288.

⁷⁴ *Tolbert v. Teets*, 27 Pa. D. & C.3d 106, 111, 1983 WL 193 (1983).

⁷⁵ TEX. FAM. CODE ANN., Chapter 8, Section 8.056 (2004).

⁷⁶ TEX. FAM. CODE ANN., Chapter 8, Section 8.054 (2004).

⁷⁷ TEX. FAM. CODE ANN., Chapter 8, Section 8.053 (2004).

Rebuttable Presumption in Modification Cases

California

California law provides that a presumption is created that financial circumstances have changed where a former spouse is cohabiting.⁷⁸ The courts have held that the Legislature created the presumption “based on thinking that cohabitation...creates a change of circumstances so tied in with the payment of spousal support as to be significant enough by itself to require a re-examination of whether such need for support continues in such a way that it still should be charged to the prior spouse.”⁷⁹

Judicial Consideration of Cohabitation in the Absence of Statutory Authority

Several jurisdictions have considered cohabitation as a factor in terminating alimony, even in the absence of statutory authority.

Arkansas

A finding of cohabitation triggered an Arkansas court to review a change in financial circumstances and end alimony payments based on that finding.⁸⁰

Mississippi

Although Mississippi law does not address cohabitation as a basis for termination of alimony, courts have created a test for determining modification of alimony on this basis. This test is whether cohabitation is occurring, whether the recipient is being supported by or is supporting the third party, and whether the recipient’s financial needs have changed.⁸¹

New Jersey

Again, New Jersey does not have an actual law providing for termination of alimony where there is cohabitation. However, the Superior Court indicated that cohabitation can generally constitute grounds for alimony modification where there is a concomitant economic benefit.⁸² In fact, where the payor makes a prima facie showing of cohabitation, a rebuttable presumption is created that shifts the burden to the recipient to show that no actual economic benefit is

being received.⁸³

Cohabitation Clauses in Settlement Agreements

Divorce settlement agreements providing for termination of alimony in the event of subsequent cohabitation have become increasingly common. Courts have routinely upheld these clauses, where there is sufficient evidence of cohabitation.⁸⁴

The New Jersey Supreme Court has, however, refused to honor a settlement clause where there was no recognition of an economic needs inquiry.⁸⁵ Here the court based its decision on both its “stated public policy to guarantee individual privacy, autonomy, and the right to develop personal relationships”,⁸⁶ and long standing precedent providing that the test for modification is whether the relationship has financially changed the needs of the recipient, even where a cohabitation clause exists.⁸⁷ The New Jersey Supreme Court subsequently did authorize a cohabitation clause to stand, where the parties previously agreed that cohabitation would constitute a material changed circumstance, and the contractual provision was fair.⁸⁸

Florida Case Law on Alimony

Critical to the court’s determination of alimony in Florida is the length of marriage. The impact of cohabitation on continuation of alimony is not addressed in statute, but a showing of cohabitation triggers a court inquiry regarding whether there has been an attendant change in circumstances. In fact, a presumption of changed circumstances may apply. Courts have terminated alimony payments based on the existence of a cohabitation clause in a dissolution agreement.

Length of Marriage

In a short-term marriage, the standard of living enjoyed by the parties does not merit much consideration.⁸⁹ The approach taken by courts is typically that “a permanent alimony award is generally inappropriate in a short-term marriage unless the dissolution created a genuine

⁷⁸ 2004 Cal. Stat. Section 4323.

⁷⁹ *In Re Marriage of Bower*, 96 Cal.App.4th 893, 117 Cal.Rptr.2d 520, 525 (2002).

⁸⁰ *See Herman v. Herman*, 335 Ark.36, 977 S.W.2d 209 (1998).

⁸¹ *Hammonds v. Hammonds*, 641 So.2d 1211, 1217 (Miss. S.Ct. 1994).

⁸² *Conlon v. Conlon*, 335 N.J.Super. 638, 763, A.2d 339, 343 (2000).

⁸³ *Rose v. Csapo*, 359 N.J.Super.53, 818 A.2d 340, 344 (2002).

⁸⁴ *See generally, Oakley v. Oakley*, 599 S.E.2d 925 (2004) (North Carolina); *Coe v. Coe*, 2004 WL 1620787 (Ohio);

Feinberg v. Hollister, 2004 WL 835974 (Virginia); *Bennett v. Bennett*, 133 S.W.3d 487 (2004) (Kentucky).

⁸⁵ *See Melletz v. Melletz*, 271 N.J. Super. 359, 638 A.2d 898 (1994).

⁸⁶ *Id.* at 901.

⁸⁷ *See Gayet v. Gayet*, 92 N.J. 149, 456 A.2d 102 (1983).

⁸⁸ *See Konzelman v. Konzelman*, 158 N.J. 185, 729 A.2d 7,13 (1999).

⁸⁹ *Ho, supra* note 5, at 71.

inequity.”⁹⁰ In contrast, in a long-term marriage, a rebuttable presumption is created in favor of permanent alimony.⁹¹ It appears that the line for determining a long-term marriage is generally drawn at a minimum of 14 years.⁹² The Fifth District Court of Appeal considered a marriage of 15 years to be more than a short-term marriage, but not automatically a long-term marriage.⁹³ Rather, this length of marriage falls into a “gray area”, consistent with rulings in the First and Second Districts.⁹⁴ Marriage lengths which qualify as falling into a “gray area” warrant examination of other relevant factors, without a presumption, prior to an award of permanent alimony.⁹⁵

Cohabitation

Under Florida law, alimony is not automatically terminated upon a showing of cohabitation.⁹⁶ Though courts do not recognize de facto remarriage as the sole basis for ending court ordered alimony,⁹⁷ they have authorized a modification of alimony upon a showing of cohabitation provided that the financial impact of the cohabitation is considered.⁹⁸ Cohabitation does not automatically equal marriage for purposes of alimony modification, as the court in *Springstead* indicated: “Because it does not entail the same benefits, duties and rights as a traditional marriage, cohabitation alone cannot precipitate a termination of alimony without the factual finding of a change in circumstances concerning the former spouse’s needs and finances.”⁹⁹ Still, the First District Court of Appeal indicated that a presumption of changed circumstances arises where cohabitation is proven, thereby shifting the burden to the cohabitant.¹⁰⁰ In determining the financial impact of cohabitation, the standard is not what the third party should be contributing, but what is actually contributed, such that the additional income is not imputed by the court.¹⁰¹ However, the court may modify alimony even based on temporary cohabitation where it is proven that financial contributions were

made during the period of cohabitation.¹⁰²

The Fourth District Court of Appeal ruled that where a dissolution agreement clearly provides for termination of alimony in the event of cohabitation, it must be upheld irrespective of a change in financial circumstances.¹⁰³ In this case, the agreement provided that alimony would terminate upon the wife’s remarriage, the husband’s death, or the wife’s cohabitation with another man, defined as an unmarried union or relationship of more than 30 days, whether or not consecutive in time.¹⁰⁴ As the settlement agreement represents a negotiated document, the court indicated its provisions are interpreted in accordance with the law on contracts.¹⁰⁵ As such, alimony must be terminated in the event of cohabitation without consideration of financial impact, where it is so clearly stipulated in a settlement agreement.¹⁰⁶

RECOMMENDATIONS

Although current Florida Statutes do not mandate termination of alimony based on cohabitation, Florida courts do consider a change in financial circumstances upon a showing of cohabitation. A 2004 proposed amendment to the state constitution and legislation proposed during the 2004 Legislative Session required an automatic termination of alimony in the event of cohabitation; such a requirement is law in only a few other states. Most other states that statutorily address this issue authorize judicial discretion in termination of alimony payments. Should the Legislature again wish to consider legislation in the 2005 session, it may wish to review language similar to that in West Virginia law, which provides for the termination of alimony upon a showing of a de facto marriage, and identifies various factors to be considered in determining whether a de facto marriage exists. As Florida statute stipulates that modification or termination is to apply retroactively only to the date that the action is filed, and considering the award of permanent alimony is in a continuing and rapid decline, mandating termination of alimony may not result in significant change prospectively. Additionally, cohabitation clauses appear much more frequently in settlement agreements, which largely resolves the issue at the time of dissolution.

⁹⁰ *Segall v. Segall*, 708 So.2d 983 (4th DCA 1998).

⁹¹ Ho, *supra* note 5, at 72.

⁹² *Id.* at 72; see *Knoff v. Knoff*, 751 So.2d 167 (Fla. 2d DCA 2000); *Young v. Young*, 677 So.2d 1301 (Fla. 5th DCA 1996); *Cruz v. Cruz*, 574 So.2d 1117 (Fla. 3d DCA 1990); *Levy v. Levy*, 2003 WL 22240196 (Fla. 3d DCA 2003).

⁹³ *Young*, 677 So.2d at 1305.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See *Tanner v. Tanner*, 850 So.2d 610(1st DCA 2003).

⁹⁷ *Bridges v. Bridges*, 842 So.2d 983, 984 (1 DCA 2003).

⁹⁸ *Springstead v. Springstead*, 717 So.2d 203, 204 (5th DCA 1998).

⁹⁹ *Springstead*, 717 So.2d at 205.

¹⁰⁰ *Bridges*, 842 So.2d at 984.

¹⁰¹ *Cheney v. Cheney*, 741 So.2d 565, 566 (4th DCA 1999).

¹⁰² *Donoff v. Donoff*, 777 So.2d 1078, 1079 (4th DCA 2001).

¹⁰³ *Robinson v. Robinson*, 788 So.2d 1092 (4th DCA 2001).

¹⁰⁴ *Id.* at 1093.

¹⁰⁵ *Id.* at 1094.

¹⁰⁶ *Id.*