



The Nuts And Bolts Of Alimony And Child Support



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Married couples live together with very real but undefined obligations towards their mutual support and towards the co-parenting of their children.

To live separate and apart as the result of a divorce or separation requires that those obligations be defined and understood by both parties. Establishing those obligations is the business of the family courts (or divorce mediators, or collaborative law attorneys, or arbitrators). In considering those obligations, the law contemplates many factors. Below are answers to the most basic questions about support.

Q Who is entitled to support?

A Dependant spouses (those with the ability to earn less than their partners), those that have a special need, perhaps related to a medical disability or other limitation, and spouses with the primary obligation to care for children have an entitlement to support upon divorce or separation from their economically better-off spouse. The amount of the support is related to the extent of the dependency and the needs of the spouse and child.

Q What types of support are there?

Support can include alimony, child support, contributions to work and school related child care, health insurance premiums, unreimbursed healthcare expenses, and contributions to college tuition and expenses. This list represents ordinary modes of support, but it is by no means a complete list. The court has jurisdiction to provide such support as is "fit, reasonable and just." Because of this, many agreements include more unique modes of support such as contributions to automobile insurance for children who are new drivers, and contributions to expensive extracurricular activities such as hockey, football, karate, cheer-leading and the like.

Q What if I need additional support after a divorce or separation?

A Unlike the distribution of a house or a retirement account, which are immutable, support obligations remain subject to the jurisdiction of the court. That is, they may be modified. The needs of children and supported spouses may change over time. It is a good idea to review court orders and divorce settlement agreements with counsel every few years to determine whether or not circumstances have changed materially, or substantially, so as to warrant additional support. Modifications are typically permitted back to the date they are requested of the court, so it is important that you be vigilant. Generally, a court will not go back to modify support prior to the date upon which a modification request is filed with the court. This means recipients of support must be proactive in pursuing their rights and evaluating whether an increase is warranted.

Q What if my spouse doesn't pay the court ordered support?

A The support collection system in New Jersey is imperfect at best. At worst, in certain cases, it can be totally ineffective. To counter the inefficiencies in the collection system, the old adage that the "squeaky wheel gets the grease" perfectly sums up the best strategy for collection. The court rules allow for (1) fixing the amount of arrearages and entering a judgment upon which interest accrues; (2) requiring payment of arrearages on a periodic basis; (3) suspension of an occupational license or driver's license consistent with law; (4) economic sanctions; (5) participation by the party, in violation of an order, in an approved community service program; (6) incarceration, with or without work release; (7) issuance of a warrant to be executed upon the further violation of the judgment or order; and (8) any other appropriate equitable remedy. Many of these collection tools can compel payment, but if you do not actively pursue collection, you risk being permanently deprived of the support.

Q When does support end?

A Child support ends upon the emancipation of the children. This is often defined by the terms of divorce agreements. If not, the general rule is support ends when a child attains the age of 18 and moves beyond the "sphere of influence" of the parents. There are many court disputes about the termination date of child support, and these are often intertwined with disputes about how much each parent must pay toward a child's college obligations. If in doubt, this is an area where the advice of a divorce attorney is crucial to understanding the intricacies of determining when support should end.

Alimony, also known as spousal support, also generally terminates based upon the specific agreements made in divorce settlement documents. Where there is no specified end date, remarriage, cohabitation with a significant other, the elimination of the need, the prospective retirement of the payor, or other changes in financial circumstances may influence the decisions.

In these troubled economic times, the right to modify support may provide much needed relief in the support of your family. You should seek advice from an attorney to determine whether you are entitled to a support modification.



Jay Turnbach, partner with the firm of Horn, Turnbach & Rybar, LLC, has 15 years experience handling family law matters in Ocean and Monmouth Counties. He is certified by the Supreme Court of New Jersey as a Certified Matrimonial Law Attorney. He is qualified as a divorce mediator pursuant to Rule 1:40 of the New Jersey Rules of Court. He is the vice president of the Jersey Shore Collaborative Law Group, chairman of the Family Law Committee of the Ocean County Bar Association, and an adjunct lecturer at Ocean County College teaching family law.

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