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PALIMONY

Unmarried Couples and the Law

Host:

Jason Wyatt, Esq., Associate Attorney at Novy & Associates

Guest:

Megan Murray, Esq., Palimony Expert and Senior Associate at the Red Bank office of Paone, Zaleski & Brown

What is Palimony?

The concept of palimony originated in the progressive state of California in the 1970s. In the landmark case *Marvin v. Marvin*, an unmarried couple that had cohabitated for many years broke up. The man (actor Lee Marvin)—a wealthy individual who had supported his partner throughout their union—refused to help her financially, leaving her destitute after the split.

According to palimony expert Megan Murray, a senior associate at Paone, Zaleski & Brown, “A clever attorney soon realized this was not right or equitable.” She explains, “Even though they had acted as a married couple and he promised he would always support her, the woman did not have the same rights that would have protected her in a marital situation.” The attorney believed there should be some sort of protection for people like her when there’s been a promise for support between individuals in long-term relationships.

In 1976, the Supreme Court of California became the first court in the nation to declare such contracts enforceable. New Jersey was hot on its heels. Three years later, in 1979, the New Jersey Supreme Court enforced an agreement between non-married partners in *Kozlowski v. Kozlowski*. The premise was that a contract—albeit verbal—had been formed based on the promises that were made between these individuals. Such a “contract” may suggest that one party is the breadwinner while the other runs the household, or that one leaves school or a job to support the other.

The word “palimony,” while not a legal term, has come to describe the financial support and property division between an unmarried couple. So if and when a relationship dissolves, the provider cannot leave his or her dependent in the lurch—without an income, a home, or other property obtained during the partnership.

What is the Palimony Process?

Similar to the divorce process in which a complaint for divorce is filed, the plaintiff files a complaint for palimony. The complaint may be based not only on contractual promises for support, but may also include counts for relief based on equitable remedies. In other words, despite what the law says, there may be other grounds for seeking restitution or righting a situation. The goal is to achieve equity and fairness.

How does the court calculate support? First, it determines the life expectancy of the payee (person needing support). Then it decides what his or her financial needs are, along with the present-day value of that amount. For example: Say the life expectancy of a woman named Martha is 15 years, and it's determined she needs \$10,000 a year over that time period. Those numbers would be multiplied to arrive at a total—in this case, \$150,000, and Martha would receive that amount as a lump sum, discounted to a present-day value. By contrast, alimony (awarded in a divorce situation) will not be awarded as a lump sum—it is paid over a period of years, either permanently or for a limited duration.

In most cases, the court will not impose a financial obligation outside the realm of what the person can pay. However, the court will consider other factors, such as: Did he or she try to hide or dissipate assets in an attempt to skirt fiscal responsibility? As in a divorce, those involved in a palimony complaint will have to go through the standard discovery process, in which assets, possessions, and other important factors must be divulged. Both parties are compelled to produce whatever documents and records are relevant to their case.

A New Twist in N.J. Palimony Law

Since palimony was introduced to New Jersey more than 30 years ago, the courts have not required written contracts between cohabitating couples. Instead, they have relied in large part on what the parties themselves—along with their friends and family members—said, together with the conduct of the parties. Based on those testimonies and the conduct of the couple, the court could then imply that a promise had been in place. As Murray notes, there was a “nobody’s going to work for free” mentality. “To use a traditional example,” she explains, “why would a woman stay with a man all those years, and cook and clean and care for him without believing she would receive financial support in return?”

Until January 2010, parties could rely on those implied promises, without having to produce written documentation. Verbal testimonies were generally sufficient. However, legislators questioned this amorphous promise of support and changed the law dramatically. They went on to amend the statute of frauds—which states that certain types of contracts must be in writing—to include those promises between unmarried couples. Now, stated the amendment, these “contracts” would have to be in writing in order to be enforceable in a palimony claim.

The problem, however, is that it was not clear when the law would take effect with regard to pending cases. While it was intended to take effect “immediately,” did it mean that claims already in the pipeline would be dismissed? Would it only apply to claims going forward? What about cases in which the promises existed prior to passage of the statute, but the complaint was not filed until after passage? “The ambiguity of this statute led to a substantial amount of confusion for the bar.” says Murray.

Writing is Your Best Recourse

While lawmakers battle out these issues, Murray’s advice is to play it safe and put your promises in writing. “If you’re living with someone in a loving and warm environment, where promises have been made and both parties expect them to be kept, you would be wise to err on the side of caution and write everything down,” she notes. “Get a legal document prepared by an attorney and have it notarized. Make it clear that both parties had the opportunity to review the document with counsel.”

This so-called cohabitation agreement should outline the rights of the parties in the event of a breakup. However, Murray cautions that cohabitation agreements are subject to scrutiny by the courts, and like other marital agreements, they cannot be relied upon as automatically enforceable.

What is “Fair”?

Unlike in civil and criminal court, family court is not bound simply to the law. It is a court of equity, which means it wants to know: “Does this pass the fair test?” Therefore, if a legal remedy does not provide the relief you need, the court may give you relief anyway—because it is the *fair* thing to do.

That said, who determines what is fair? There are no guidelines for equity, and the answer may vary from one judge to another. Given this subjectivity, it is difficult for attorneys to know what a judge will decide, as each judge’s idea of fairness is different, and their decisions can be unpredictable. As time goes on and more and more palimony cases reach the courts, fairness standards will begin to evolve.

Currently, there is consensus from the bar that, regardless of the statute of frauds, some form of relief should be given. Murray does not believe the door will be closed on people who were in relationships for 10, 20, or 30+ years. “For them to get nothing would offend common standards of fairness and decency,” she explains.

Tips for Protecting Yourself

- When drafting a cohabitation agreement, each party should seek individual counsel; if you use the same attorney, the document may be unenforceable

- ❑ Make sure the agreement is equitable at the time it will be enforced; for example, if you have \$10 million, a Ferrari, and three houses and you stipulate that your partner will get nothing if and when you split, the agreement will likely not hold water—this would not be considered *fair*
- ❑ Put both your names on assets you purchase together, and stow these records in a safe place; you may also want to transfer certain assets into joint accounts/names
- ❑ Find out if you are named in your partner’s will, and consider drafting mutual or reciprocal wills (whereby each party makes provisions for the benefit of the other); while this type of will is not always advised, it could help protect you from being left penniless when your partner dies (the attorneys at Novy & Associates can provide guidance on this)
- ❑ Don’t be “pennywise and pound foolish,” cautions Murray; in an effort to avoid attorney’s fees up front, some people don’t get the proper documents in order, and they end of paying tens of thousands of dollars down the road in court and litigation fees; “It’s worth making sure your documents are correct and legally sound,” she emphasizes

More and more people are choosing to live together outside the covenant of marriage, often for practical reasons. The trend is evident right here in Ocean and Monmouth counties, where senior citizens—for the sake of their children and grandchildren—decide not to get married. If you choose to go this route, make sure you take every measure to protect yourself and your assets. Delaying or resisting this move could lead to emotionally and financially draining consequences.

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“*Inside the Law*” is broadcast every other Saturday from 10:00 to 11:00 a.m. on 1160 WOBM-AM. To view a schedule of upcoming programs, visit www.NovyLaw.com.