

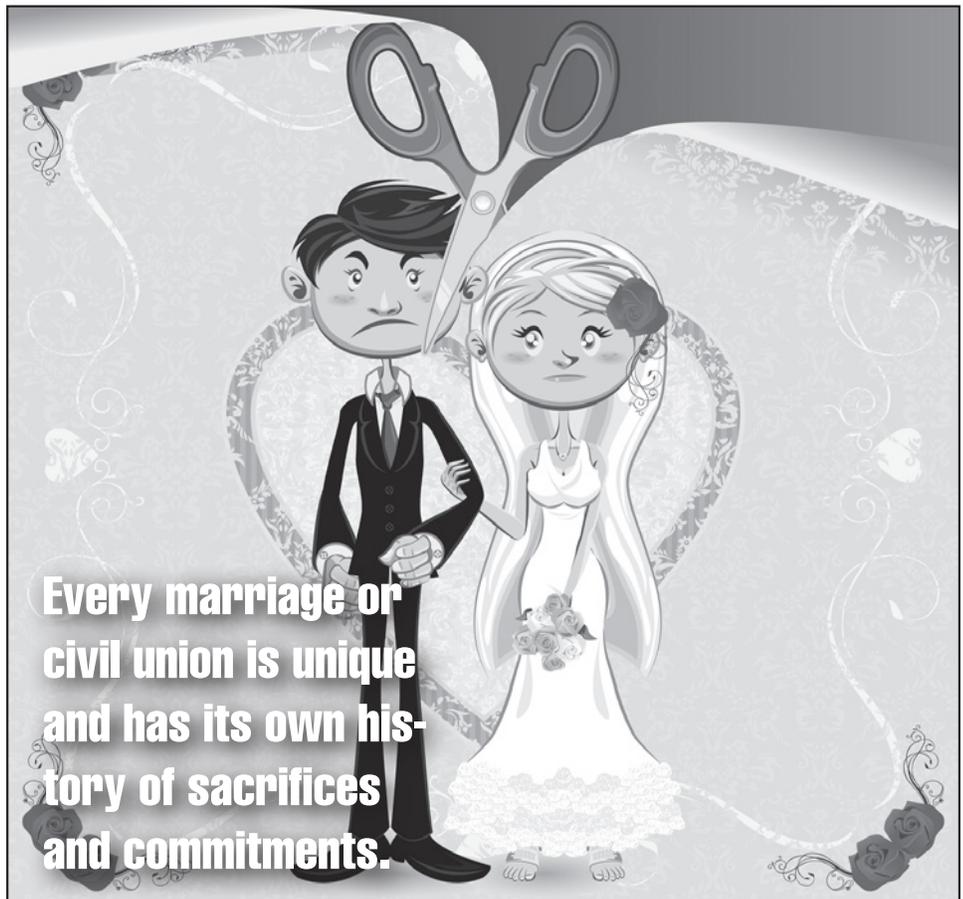
## FAMILY LAW

# The Policy Considerations Behind the Revised Alimony Statute

By Jeralyn L. Lawrence

**N**early three years ago, in February 2012, alimony became the subject of contentious legislative debate in New Jersey. A reform movement was quickly afoot, and there were calls for a blue ribbon commission to study and review the laws governing alimony. Both the Senate and the Assembly soon introduced resolutions to establish a commission. The New Jersey State Bar Association supported a commission to review alimony, and amassed a coalition of 24 separate organizations, totaling more than 160,000 members, to push for enactment of a revised alimony statute. The groups advocating for reform were also pushing for a commission.

Over the next two years, however, the alimony reformers would deviate from supporting a commission, instead supporting the establishment of formulaic guidelines that essentially mimicked those enacted in Massachusetts in 2010. Family lawyers in New Jersey recognized that the application of the Massachusetts-based arbitrary guidelines had no place in New Jersey, as our courts, to achieve fairness and equity, place significant weight on the individual facts and circumstances of each particular case. As the lobbying efforts intensified in both camps, with the reformers on one side and the coalition on the other, it was critical to the coalition that any alterations to the alimony statute continue to recognize that marriages and civil unions are partnerships and, therefore, sacrific-



es and commitments made by both parties during these partnerships must be considered in any alimony analysis.

After much back-and-forth, give-and-take, and compromises on both sides, a settlement as to what the alimony statute should look like in New Jersey was reached in late June 2014 and signed into law on Sept. 10, by Gov. Chris Christie. The newly-enacted statute exemplifies a nationwide model for other states to emulate, as it resists the temptation to employ arbitrary formulaic guidelines, and sets out a host of statutory factors pertaining to changes in circumstances of both payors and payees in the divorce

and post-divorce process. The statute has been revised based on the premise that fairness is paramount, and the application of facts to the law remains essential to the achievement of an equitable result in a divorce or post-divorce process.

### Open Durational Alimony

In addressing the length and amount of alimony, the goal of assisting a supported spouse to achieve a lifestyle that is reasonably comparable to the lifestyle enjoyed during the marriage remains the lynch pin of the alimony analysis. The revised statute reaffirms

*Lawrence is a divorce attorney with Norris, McLaughlin & Marcus in Bridgewater, N.J. She is chairperson of the Family Law Section of the NJSBA and president-elect of the Somerset County Bar Association.*

this, and confirms that both parties are entitled to a comparable marital lifestyle, with neither party having a greater right than the other.

Recognizing that “permanent alimony” was a misnomer, often being understood as “lifetime” alimony because of its label, it was renamed “open-durational alimony” in an attempt to signify that the length is open to modification based on changes in circumstances, unless there is an agreement between the parties providing otherwise. Durational limitations for marriages or civil unions lasting less than 20 years are included in the statute, stating that alimony shall not exceed the length of the marriage or civil union, except in exceptional circumstances. The exceptional circumstances are given consideration by analyzing eight factors, and the factors are defined broadly. The reason for such a broad application of the factors is to allow the individual facts and circumstances of each marriage or civil union to be considered and analyzed in assessing the length of alimony. This analysis assures that the contributions made by each spouse, as well as the circumstances surrounding the marital partnership, are recognized and considered by the court in an alimony analysis, which is important to both the payors and the recipients of alimony.

### Changes in Circumstances

The statute further addresses changes in circumstances, such as retirement, cohabitation and job loss, by codifying certain factors previously set forth in case law. With increased post-judgment litigation in these areas, it was imperative to add numerous factors to the statute to help provide predictability and consistency of outcomes throughout the state, while still requiring the analysis and application of relevant facts to the law in an evaluative, thoughtful process.

For example, it was important to provide those seeking to retire, pro-

spectively or actually, with a road map to navigate how retirement will impact alimony. Essentially, retirement at full retirement age, as defined by Social Security, is rebuttably presumed to be a good-faith retirement. A host of factors are then considered in assessing if alimony should terminate or continue and, if so, for how long it should continue, and how much the alimony amount should be. For prospective retirement situations, where one seeks to retire prior to reaching full retirement age as defined by the federal government, the person seeking to retire has the burden of proving by a preponderance of the evidence, based on the consideration of eight broad factors, that the retirement is in good faith. The addition of these provisions to the statute provides clarity and guidance as to how to address retirement and the impact on alimony. This guidance helps provide predictability and stability to both payors and payees of alimony.

As to job loss situations in cases dealing with W-2 employees and business owners, 10 factors are provided to help guide and analyze these difficult situations. Previously, there were inconsistencies throughout the state as to how much time must elapse before an application based on loss of employment could be filed with the court. The revised statute sets forth a 90-day period.

Regarding co-habitation, the statute clarifies some inconsistencies in the case law as to whether it is essential that the cohabitants be living together on a full-time basis to prove cohabitation exists. The intention was to eliminate the gamesmanship that often occurs in assessing if the recipient of alimony is cohabitating. The statute identifies seven factors to provide clarity, including intertwined finances, sharing household chores, and further factors that indicate whether there is a mutually supportive, intimate, personal relationship in which the couple has undertaken duties and privileges tantamount to those in a

common marriage. If such a relationship is proven to exist, alimony may be suspended or terminated. Thus, whether or not the parties live together on a full-time basis is one of many factors to be considered.

### Effective Date

The statute takes effect immediately. To preserve the sanctity of prior agreements and orders, the statute does not apply to any prior agreements or orders that provide for terms that differ from the statute. The statute, however, is curative in nature and to the extent an agreement or order is silent on an issue, the statute applies to provide the guidance needed and the factors to be considered. It is imperative that the law not be applied retroactively, as many made significant compromises in reaching a global settlement. For example, one may have waived an interest in a business or a retirement asset and, in exchange, received more in alimony or a longer duration of alimony. The same is true for a judicial ruling such that a court, when issuing a decision following a trial, does not deal with alimony in a vacuum and is assessing alimony, child support and equitable distribution on the whole, when making their findings of facts and conclusions of law. To retroactively allow for a modification as to the amount or length of alimony, would then trigger a review of every agreement or judicial ruling where alimony was an issue. This retroactive review is unfair and contrary to law.

The statute is important to all those who practice in this field, and to those who pay or receive alimony. Every marriage or civil union is unique and has its own history of sacrifices and commitments. All of these facts and circumstances remain relevant in New Jersey’s revamped alimony statute, and New Jersey has reaped the benefit in warding off the implementation of rudimentary, formulaic guidelines. ■