

December 6, 2010

## **New Mexico Alimony: Til Death Do Us Part!**

Spousal support or alimony as it is more commonly known is neither mandatory nor automatic when parties get divorced in New Mexico. Instead, spousal support may be awarded by the Court or agreed upon by the parties to a divorce based on consideration of several statutory factors.

There are numerous factors that go into the award of alimony. They include factors such as the length of the parties' marriage, the education of both parties, the health and age of the parties, the employment and income history of the parties, and the ability of the parties to work following the divorce.

There are other factors as well depending on the circumstance of the parties. As such, the determination of whether or not spousal support is awarded will vary greatly from case to case.

The amount and duration of spousal support will also vary depending on the circumstances. The amount and duration of support will depend largely on the both the income and the income earning potential of the parties.

In some cases, support is paid only for a few months or years.. In others, it may be permanent in nature. Clearly, spousal support terminates when the paying party dies. On the other hand, many people often assume that spousal support automatically terminates when the receiving party gets remarried. This is not necessarily true. This is a negotiable term.

Parties negotiating a marital settlement that involves spousal support must be very careful to identify not only the amount of support, but when, if ever, that support will terminate. One thing the paying party will want to avoid is the use of any language suggesting that alimony is "non-modifiable." Of course, the party receiving it may take the opposite position.

Once the term "non-modifiable" is included in an award of spousal support, which is then entered by the Court, it is almost impossible to change. Therefore, it is essential that parties on either side of a dispute over spousal support consult an experienced divorce attorney or their rights to modify alimony may be forever waived.

### **DISCLAIMER**

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The negotiation and drafting of the terms of alimony can have lasting and even permanent consequences. It is not something to take lightly.

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