

Recession Relief: When and How Can a Former Spouse Modify a Support Award in Today's Economy

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In these ever-changing and increasingly uncertain economic times, many people are experiencing a change in their financial circumstances which may require a re-examination of their support obligations or needs. Have you lost your job? Have you experienced a significant decline in your income, perhaps through a reduction in your base salary or the loss of a bonus or over-time? Have you been pursuing education or job training and are now experiencing difficulty in re-entering the job market? If you are a payor spouse and struggling to meet your support obligations, or if you are the payee spouse and require continued or increased support from your former spouse, it may be time to modify the terms of your Judgment of Divorce or Settlement Agreement.

A post-judgment review and modification of spousal support - upward or downward - is based on a demonstrated substantial change in circumstances. While there is no "list" of circumstances that would trigger the automatic modification of a support obligation or need, historically, New Jersey Courts have recognized increases or decreases in income, illness, maturation of children, loss of employment, or retirement as triggering events that may warrant modification of support. The present-day post-judgment application is complicated by today's financial climate, with its roller-coaster stock market; rising unemployment; mortgage, bank and motor industry crises; and government bailouts. This is because a key component of a post-judgment application is a demonstration that the change in circumstance asserted is not temporary. Courts examine these applications on a case-by-case basis and review the specific circumstances and needs of both the payor and payee spouse.

How Does A Former Spouse Obtain A Post-Judgment Support Modification?

There are two ways a former spouse can obtain a post-judgment support modification - either non-consensually through a court application or consensually through an executed agreement or consent order.

When a former spouse experiences a significant change in circumstance, a motion can be made by either the payor or payee spouse. The payor spouse can seek a reduction in a support award. A payee can seek an increase in support or continuation of the term of support. A Family Court judge will review the

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original support award and determine whether the support terms should be modified. The former spouse seeking the modification has the burden of demonstrating a significant change in circumstance by the submission of a certification that details how his or her situation differs now from the time of the divorce. When reviewing a motion, the court must first determine that the spouse seeking the modification has demonstrated a "change in circumstance" sufficient to modify the support. This prima facie (or preliminary) showing of changed circumstances must be shown before the court may consider the other spouse's ability to pay, needs, and income or may order the exchange of financial information. If the court finds that a question of fact exists as to whether the support provision should be changed, it may conduct a plenary hearing (mini-trial) before rendering a final decision. If there is no factual contest, the issues may even be resolved without a hearing.

Sometimes parties may agree to a post-judgment modification by agreement or consent. The payor or payee advises the former spouse, directly or through counsel, of his or her change in circumstance. Counsel can then agree to exchange financial documents, i.e., Case Information Statements, tax returns and current pay stubs, to gather information and determine whether a temporary or permanent agreement can be reached to address the change in circumstance. In these difficult financial times, former spouses might agree to increase or decrease support until the change in circumstance abates. The goal would be to enable the party experiencing the hardship to work toward finding a new job or one with higher pay. The reverse would also apply, in which a temporary increase of support is arranged for the recipient of support who is experiencing a downturn.

With the assistance of counsel, the former spouses can enter into a consent order confirming their agreement. A consent order is a document which would outline the modifications of the support award. The consent order would be executed by the former spouses and their attorneys and ultimately signed by a judge. The incentive for agreeing to a post-judgment support modification is considerable. Contested applications can be costly, especially if there is a plenary hearing. Additionally, the former spouses can reserve various rights within the consent order, including the right to obtain credits to him or her for voluntary support decreases or increases once the financial hardship has been rectified.

Conclusion

Whether arrived at through a court application or by mutual agreement, the modification of support can be a difficult and complicated process in these changing financial times. This process is best managed by an experienced attorney. If you are faced with a significant change in circumstance which requires a modification of your support obligation, or if you require the assistance of an attorney to determine the merits of your post-judgment application, please contact an attorney at Sills Cummis & Gross P.C. for a consultation.