

## Cohabitation Facts To Consider – Part 2

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Prior to the enactment of the alimony statute, N.J.S.A. 2A:34-23(n), New Jersey Courts relied on the standards set by previous case precedent to determine whether a party was cohabiting and its impact on alimony. Essentially, the new statute consolidates many of the standards developed in prior case law to simplify the inquiry as to whether a particular romantic relationship amounts to cohabitation.

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The New Jersey Legislature defines cohabitation as a “mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union.” To further assist in determining whether a relationship fits the above definition, the new legislation identifies eight factors for Courts to consider in determining whether cohabitation is occurring:

1. Intermingled finances, such as joint bank accounts and other joint holdings or liabilities;
2. Shared or joint responsibility for living expenses;
3. Recognition of the relationship in the couple's family and social circle;
4. Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;
5. Shared household chores;
6. Whether the alimony recipient has received an enforceable promise of support from another individual within the meaning of subsection h. of R.S.25:1-5;
7. The relationship's length; and
8. Any additional relevant evidence.

If you are paying alimony, after reviewing these factors, you may come away thinking, “How in the world am I supposed to prove most of these factors? I have no idea if my ex-spouse shares a bank account or household chores with his or her significant other.” Don’t fret, because if you believe that your ex-spouse is cohabiting, you only have to provide the Court with evidence that, at first appearance, suggests cohabitation. This can come in the form of showing that your former spouse is spending most nights at the home of his or her significant other. In the legal field, this is called making a “prima facie” case. Once you have successfully done so, you will be given the opportunity to obtain discovery from your ex-spouse. This discovery includes obtaining bank records, proof of living expenses, taking depositions of your ex-spouse, and other witnesses to determine the true extent of the relationship. It is in the discovery stage that you will be able to obtain the information to prove the foregoing factors.

If you are in a serious relationship and receive alimony, you should look closely at the eight factors and determine if any of them apply to you. If you find that any of the above factors are applicable, your romantic relationship may have an impact on your entitlement to alimony.

Whether you are receiving or paying alimony, the issue of cohabitation can be tricky, as it is fact-sensitive and often not clear cut. You should contact an attorney to assist you in determining whether or not your current living arrangement or your spouse’s relationship may have an impact on your entitlement to alimony or your responsibility to pay alimony.