

Why Protecting Your Assets In the Event of Divorce Just Got More Critical

Ellen Chang (<http://www.mainstreet.com/author/1611359>) | Follow ()

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NEW YORK (MainStreet (<http://www.mainstreet.com>)) — The newly passed alimony law in New Jersey underwent a substantial overhaul, eliminating long-term payments and mirroring the trend of many other states. The legislation highlights how protecting your assets in case of a divorce is becoming even more critical, as people are living and working longer and as the length of time that alimony is being paid is getting reduced.

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Both Maine and Texas, for example, have strict alimony laws that limit the amount of payments to short durations, said Robert Epstein, a family law attorney with Fox Rothschild in Roseland, N. J.

“Since alimony is very state specific, it is critical that you speak with an attorney,” he said. “The current 'societal normal' will affect these laws.”

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One of the most significant changes to the alimony law is allowing the person paying the alimony to modify or terminate the obligation in a “more defined path” while avoiding litigation, Epstein said. The law also eliminates permanent alimony, making it “open durational” alimony, which will largely only be available for marriages of 20 years or more. For marriages less than 20 years, the alimony duration cannot be longer than the marriage itself.

“This law had to happen for better or worse,” he said. “There was a push for alimony reform and a balance was struck.”

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Is A Prenup the Panacea?

More couples need to sign prenuptial agreements (<http://www.mainstreet.com/article/why-you-need-a-prenup-to-marry-even-if-you-think-youre-poor>) since the “divorce rate is now trumping the Libor rate, said April Masini, a relationship expert and author.

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“Divorces are up and so too are second, third and fourth marriages,” she said. “Anyone who ignores that fact going into a marriage is going to find themselves in financial distress. Fairy tales are awesome for children. Real life is a lot closer to a reality TV show.”

Second and subsequent marriages mean more complicated relationships, she said, with alimony reform protecting assets is of the essence. Whether the children from your first, second or third marriage or those from your spouses are toddlers or adults, they will be looking for a “piece of the financial pie that is your portfolio,” Masini said.

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“The most succinct way to detect assets properly during the course of a divorce is to be able to rely on a prenuptial agreement,” said Barry Slotnick, a New York defense and divorce attorney. “The parties should anticipate future finances

and layout distribution upon divorce. Unfortunately, too many people ignore what happens in 50% of the marriages and find themselves in difficulty.”

Even prenups can be challenged, but couples who have had a series of discussions or agree on a prenup “gives you a heads-up about what may be weaknesses or surprise compatibilities in your relationship,” Masani said.

“Don’t fool yourself into thinking a prenup means that what’s written is engraved in immutable stone,” Masani said. “It’s a lot better to have hashed one out and a chance at greater peace, because it just may hold water if challenged.”

The Change Continues

Alimony reform is occurring in several states. Massachusetts passed a related law in 2011 and a Florida alimony reform law was proposed in 2013 that was ultimately vetoed by the governor, said Gary DuBoff, a tax and accounting principal at MBAF in New York. Florida will most likely propose alimony reform again in 2015. Several other states are considering alimony reform including South Carolina, Oregon and Connecticut.

Retirement plans and the distribution or separation of those assets are protected under federal law, he said. For example, distributions from a 401(k) plan in the form of a lump sum must be formally “waived” by a married spouse.

“The law provides some basic protection to spouses, which may not necessarily be the intent of both of the parties,” DuBoff said.

In the past few years, many states have enacted or tried to enact alimony reform legislation, said Reza Gorlesorkhi, a principal with Joseph, Greenwald & Laake in Rockville, Md.

“In my opinion, some states have gone to the extreme and some have made adjustments,” he said.

Texas now limited alimony terms and payments cannot exceed three years unless the person seeking alimony has a disability and the amount is capped at \$2,500 a month or 20% of the paying spouse’s monthly gross income.

“I don’t agree with Texas’s approach as I don’t think every fact pattern or divorce case fits the Texas model,” Gorlesorkhi said. “If it did, most divorce lawyers would be out of business. I believe that a progressive approach is more practical.”

The Maryland model strongly favors rehabilitative alimony but has not yet ruled out the concept of permanent or indefinite alimony.

Regardless of where each state stands on the issue of alimony, the driving force behind the sweeping alimony reform legislation is driven by the change to the American family model, Gorlesorkhi said. The traditional American family of today is a lot different from the family of the 1970 when most of the alimony laws were enacted.

“Today’s family models include working couples, working wives and stay-at-home dads,” he said.

Preserving retirement benefits occurs in divorces despite a common misconception that you have to split your retirement benefits the minute you get married, Gorlesorkhi said. Most jurisdictions define marital property as commencing from the day you get married until the date you get separated and/or divorced.

If a person who enters into a marriage with a \$100,000 401(k) plan, for example, the amount is considered non-marital. If you get divorced ten years later and your 401(k) is now \$400,000, the marital portion is \$300,000 and the non-marital portion is \$100,000.

--Written by Ellen Chang for MainStreet

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