

ASSEMBLY, No. 354

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman SEAN T. KEAN

District 30 (Monmouth and Ocean)

SYNOPSIS

Permits modification of alimony award based on cohabitation of supported spouse.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning alimony and amending N.J.S.2A:34-23.

2

3 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 4 *of New Jersey:*

5

6 1. N.J.S.2A:34-23 is amended to read as follows:

7 2A:34-23. Alimony, maintenance.

8 Pending any matrimonial action or action for dissolution of a
 9 civil union brought in this State or elsewhere, or after judgment of
 10 divorce or dissolution or maintenance, whether obtained in this
 11 State or elsewhere, the court may make such order as to the alimony
 12 or maintenance of the parties, and also as to the care, custody,
 13 education and maintenance of the children, or any of them, as the
 14 circumstances of the parties and the nature of the case shall render
 15 fit, reasonable and just, and require reasonable security for the due
 16 observance of such orders, including, but not limited to, the creation
 17 of trusts or other security devices, to assure payment of reasonably
 18 foreseeable medical and educational expenses. Upon neglect or
 19 refusal to give such reasonable security, as shall be required, or
 20 upon default in complying with any such order, the court may
 21 award and issue process for the immediate sequestration of the
 22 personal estate, and the rents and profits of the real estate of the
 23 party so charged, and appoint a receiver thereof, and cause such
 24 personal estate and the rents and profits of such real estate, or so
 25 much thereof as shall be necessary, to be applied toward such
 26 alimony and maintenance as to the said court shall from time to
 27 time seem reasonable and just; or the performance of the said orders
 28 may be enforced by other ways according to the practice of the
 29 court. Orders so made may be revised and altered by the court from
 30 time to time as circumstances may require.

31 The court may order one party to pay a retainer on behalf of the
 32 other for expert and legal services when the respective financial
 33 circumstances of the parties make the award reasonable and just. In
 34 considering an application, the court shall review the financial
 35 capacity of each party to conduct the litigation and the criteria for
 36 award of counsel fees that are then pertinent as set forth by court
 37 rule. Whenever any other application is made to a court which
 38 includes an application for pendente lite or final award of counsel
 39 fees, the court shall determine the appropriate award for counsel
 40 fees, if any, at the same time that a decision is rendered on the other
 41 issue then before the court and shall consider the factors set forth in
 42 the court rule on counsel fees, the financial circumstances of the
 43 parties, and the good or bad faith of either party. The court may not
 44 order a retainer or counsel fee of a party convicted of an attempt or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 conspiracy to murder the other party to be paid by the party who
2 was the intended victim of the attempt or conspiracy.

3 a. In determining the amount to be paid by a parent for support
4 of the child and the period during which the duty of support is
5 owed, the court in those cases not governed by court rule shall
6 consider, but not be limited to, the following factors:

7 (1) Needs of the child;

8 (2) Standard of living and economic circumstances of each
9 parent;

10 (3) All sources of income and assets of each parent;

11 (4) Earning ability of each parent, including educational
12 background, training, employment skills, work experience,
13 custodial responsibility for children including the cost of providing
14 child care and the length of time and cost of each parent to obtain
15 training or experience for appropriate employment;

16 (5) Need and capacity of the child for education, including
17 higher education;

18 (6) Age and health of the child and each parent;

19 (7) Income, assets and earning ability of the child;

20 (8) Responsibility of the parents for the court-ordered support of
21 others;

22 (9) Reasonable debts and liabilities of each child and parent; and

23 (10) Any other factors the court may deem relevant.

24 The obligation to pay support for a child who has not been
25 emancipated by the court shall not terminate solely on the basis of
26 the child's age if the child suffers from a severe mental or physical
27 incapacity that causes the child to be financially dependent on a
28 parent. The obligation to pay support for that child shall continue
29 until the court finds that the child is relieved of the incapacity or is
30 no longer financially dependent on the parent. However, in
31 assessing the financial obligation of the parent, the court shall
32 consider, in addition to the factors enumerated in this section, the
33 child's eligibility for public benefits and services for people with
34 disabilities and may make such orders, including an order involving
35 the creation of a trust, as are necessary to promote the well-being of
36 the child.

37 As used in this section "severe mental or physical incapacity"
38 shall not include a child's abuse of, or addiction to, alcohol or
39 controlled substances.

40 b. In all actions brought for divorce, dissolution of a civil
41 union, divorce from bed and board, legal separation from a partner
42 in a civil union couple or nullity the court may award one or more
43 of the following types of alimony: open durational alimony;
44 rehabilitative alimony; limited duration alimony or reimbursement
45 alimony to either party. In so doing the court shall consider, but not
46 be limited to, the following factors:

47 (1) The actual need and ability of the parties to pay;

48 (2) The duration of the marriage or civil union;

- 1 (3) The age, physical and emotional health of the parties;
- 2 (4) The standard of living established in the marriage or civil
- 3 union and the likelihood that each party can maintain a reasonably
- 4 comparable standard of living, with neither party having a greater
- 5 entitlement to that standard of living than the other;
- 6 (5) The earning capacities, educational levels, vocational skills,
- 7 and employability of the parties;
- 8 (6) The length of absence from the job market of the party
- 9 seeking maintenance;
- 10 (7) The parental responsibilities for the children;
- 11 (8) The time and expense necessary to acquire sufficient
- 12 education or training to enable the party seeking maintenance to
- 13 find appropriate employment, the availability of the training and
- 14 employment, and the opportunity for future acquisitions of capital
- 15 assets and income;
- 16 (9) The history of the financial or non-financial contributions to
- 17 the marriage or civil union by each party including contributions to
- 18 the care and education of the children and interruption of personal
- 19 careers or educational opportunities;
- 20 (10)The equitable distribution of property ordered and any
- 21 payouts on equitable distribution, directly or indirectly, out of
- 22 current income, to the extent this consideration is reasonable, just
- 23 and fair;
- 24 (11)The income available to either party through investment of
- 25 any assets held by that party;
- 26 (12)The tax treatment and consequences to both parties of any
- 27 alimony award, including the designation of all or a portion of the
- 28 payment as a non-taxable payment;
- 29 (13)The nature, amount, and length of pendente lite support paid,
- 30 if any; and
- 31 (14)Any other factors which the court may deem relevant.
- 32 In each case where the court is asked to make an award of
- 33 alimony, the court shall consider and assess evidence with respect
- 34 to all relevant statutory factors. If the court determines that certain
- 35 factors are more or less relevant than others, the court shall make
- 36 specific written findings of fact and conclusions of law on the
- 37 reasons why the court reached that conclusion. No factor shall be
- 38 elevated in importance over any other factor unless the court finds
- 39 otherwise, in which case the court shall make specific written
- 40 findings of fact and conclusions of law in that regard.
- 41 When a share of a retirement benefit is treated as an asset for
- 42 purposes of equitable distribution, the court shall not consider
- 43 income generated thereafter by that share for purposes of
- 44 determining alimony.
- 45 c. In any case in which there is a request for an award of
- 46 alimony, the court shall consider and make specific findings on the
- 47 evidence about all of the statutory factors set forth in subsection b.
- 48 of this section.

1 For any marriage or civil union less than 20 years in duration,
2 the total duration of alimony shall not, except in exceptional
3 circumstances, exceed the length of the marriage or civil union.
4 Determination of the length and amount of alimony shall be made
5 by the court pursuant to consideration of all of the statutory factors
6 set forth in subsection b. of this section. In addition to those
7 factors, the court shall also consider the practical impact of the
8 parties' need for separate residences and the attendant increase in
9 living expenses on the ability of both parties to maintain a standard
10 of living reasonably comparable to the standard of living
11 established in the marriage or civil union, to which both parties are
12 entitled, with neither party having a greater entitlement thereto.

13 Exceptional circumstances which may require an adjustment to
14 the duration of alimony include:

15 (1) The ages of the parties at the time of the marriage or civil
16 union and at the time of the alimony award;

17 (2) The degree and duration of the dependency of one party on
18 the other party during the marriage or civil union;

19 (3) Whether a spouse or partner has a chronic illness or unusual
20 health circumstance;

21 (4) Whether a spouse or partner has given up a career or a career
22 opportunity or otherwise supported the career of the other spouse or
23 partner;

24 (5) Whether a spouse or partner has received a disproportionate
25 share of equitable distribution;

26 (6) The impact of the marriage or civil union on either party's
27 ability to become self-supporting, including but not limited to either
28 party's responsibility as primary caretaker of a child;

29 (7) Tax considerations of either party;

30 (8) Any other factors or circumstances that the court deems
31 equitable, relevant and material.

32 An award of alimony for a limited duration may be modified
33 based either upon changed circumstances, or upon the
34 nonoccurrence of circumstances that the court found would occur at
35 the time of the award. The court may modify the amount of such an
36 award, but shall not modify the length of the term except in unusual
37 circumstances.

38 In determining the length of the term, the court shall consider the
39 length of time it would reasonably take for the recipient to improve
40 his or her earning capacity to a level where limited duration
41 alimony is no longer appropriate.

42 d. Rehabilitative alimony shall be awarded based upon a plan
43 in which the payee shows the scope of rehabilitation, the steps to be
44 taken, and the time frame, including a period of employment during
45 which rehabilitation will occur. An award of rehabilitative alimony
46 may be modified based either upon changed circumstances, or upon
47 the nonoccurrence of circumstances that the court found would
48 occur at the time of the rehabilitative award.

1 This section is not intended to preclude a court from modifying
2 alimony awards based upon the law.

3 e. Reimbursement alimony may be awarded under
4 circumstances in which one party supported the other through an
5 advanced education, anticipating participation in the fruits of the
6 earning capacity generated by that education. An award of
7 reimbursement alimony shall not be modified for any reason.

8 f. Except as provided in subsection i., nothing in this section
9 shall be construed to limit the court's authority to award open
10 durational alimony, limited duration alimony, rehabilitative alimony
11 or reimbursement alimony, separately or in any combination, as
12 warranted by the circumstances of the parties and the nature of the
13 case.

14 g. In all actions for divorce or dissolution other than those
15 where judgment is granted solely on the ground of separation the
16 court may consider also the proofs made in establishing such
17 ground in determining an amount of alimony or maintenance that is
18 fit, reasonable and just. In all actions for divorce, dissolution of
19 civil union, divorce from bed and board, or legal separation from a
20 partner in a civil union couple where judgment is granted on the
21 ground of institutionalization for mental illness the court may
22 consider the possible burden upon the taxpayers of the State as well
23 as the ability of the party to pay in determining an amount of
24 maintenance to be awarded.

25 h. Except as provided in this subsection, in all actions where a
26 judgment of divorce, dissolution of civil union, divorce from bed
27 and board or legal separation from a partner in a civil union couple
28 is entered the court may make such award or awards to the parties,
29 in addition to alimony and maintenance, to effectuate an equitable
30 distribution of the property, both real and personal, which was
31 legally and beneficially acquired by them or either of them during
32 the marriage or civil union. However, all such property, real,
33 personal or otherwise, legally or beneficially acquired during the
34 marriage or civil union by either party by way of gift, devise, or
35 intestate succession shall not be subject to equitable distribution,
36 except that interspousal gifts or gifts between partners in a civil
37 union couple shall be subject to equitable distribution. The court
38 may not make an award concerning the equitable distribution of
39 property on behalf of a party convicted of an attempt or conspiracy
40 to murder the other party.

41 i. No person convicted of Murder, N.J.S.2C:11-3;
42 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
43 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
44 substantially similar offense under the laws of another jurisdiction,
45 may receive alimony if: (1) the crime results in death or serious
46 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
47 family member of a divorcing party; and (2) the crime was
48 committed after the marriage or civil union. A person convicted of

1 an attempt or conspiracy to commit murder may not receive
2 alimony from the person who was the intended victim of the
3 attempt or conspiracy. Nothing in this subsection shall be
4 construed to limit the authority of the court to deny alimony for
5 other bad acts.

6 As used in this subsection:

7 "Family member" means a spouse, child, parent, sibling, aunt,
8 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
9 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
10 stepchild, stepbrother, stepsister, half brother, or half sister, whether
11 the individual is related by blood, marriage or civil union, or
12 adoption.

13 j. Alimony may be modified or terminated upon the
14 prospective or actual retirement of the obligor.

15 (1) There shall be a rebuttable presumption that alimony shall
16 terminate upon the obligor spouse or partner attaining full
17 retirement age, except that any arrearages that have accrued prior to
18 the termination date shall not be vacated or annulled. The court may
19 set a different alimony termination date for good cause shown based
20 on specific written findings of fact and conclusions of law.

21 The rebuttable presumption may be overcome if, upon
22 consideration of the following factors and for good cause shown,
23 the court determines that alimony should continue:

24 (a) The ages of the parties at the time of the application for
25 retirement;

26 (b) The ages of the parties at the time of the marriage or civil
27 union and their ages at the time of entry of the alimony award;

28 (c) The degree and duration of the economic dependency of the
29 recipient upon the payor during the marriage or civil union;

30 (d) Whether the recipient has foregone or relinquished or
31 otherwise sacrificed claims, rights or property in exchange for a
32 more substantial or longer alimony award;

33 (e) The duration or amount of alimony already paid;

34 (f) The health of the parties at the time of the retirement
35 application;

36 (g) Assets of the parties at the time of the retirement
37 application;

38 (h) Whether the recipient has reached full retirement age as
39 defined in this section;

40 (i) Sources of income, both earned and unearned, of the parties;

41 (j) The ability of the recipient to have saved adequately for
42 retirement; and

43 (k) Any other factors that the court may deem relevant.

44 If the court determines, for good cause shown based on specific
45 written findings of fact and conclusions of law, that the
46 presumption has been overcome, then the court shall apply the
47 alimony factors as set forth in subsection b. of this section to the
48 parties' current circumstances in order to determine whether

1 modification or termination of alimony is appropriate. If the obligor
2 intends to retire but has not yet retired, the court shall establish the
3 conditions under which the modification or termination of alimony
4 will be effective.

5 (2) Where the obligor seeks to retire prior to attaining the full
6 retirement age as defined in this section, the obligor shall have the
7 burden of demonstrating by a preponderance of the evidence that
8 the prospective or actual retirement is reasonable and made in good
9 faith. Both the obligor's application to the court for modification or
10 termination of alimony and the obligee's response to the application
11 shall be accompanied by current Case Information Statements or
12 other relevant documents as required by the Rules of Court, as well
13 as the Case Information Statements or other documents from the
14 date of entry of the original alimony award and from the date of any
15 subsequent modification.

16 In order to determine whether the obligor has met the burden of
17 demonstrating that the obligor's prospective or actual retirement is
18 reasonable and made in good faith, the court shall consider the
19 following factors:

20 (a) The age and health of the parties at the time of the
21 application;

22 (b) The obligor's field of employment and the generally
23 accepted age of retirement for those in that field;

24 (c) The age when the obligor becomes eligible for retirement at
25 the obligor's place of employment, including mandatory retirement
26 dates or the dates upon which continued employment would no
27 longer increase retirement benefits;

28 (d) The obligor's motives in retiring, including any pressures to
29 retire applied by the obligor's employer or incentive plans offered
30 by the obligor's employer;

31 (e) The reasonable expectations of the parties regarding
32 retirement during the marriage or civil union and at the time of the
33 divorce or dissolution;

34 (f) The ability of the obligor to maintain support payments
35 following retirement, including whether the obligor will continue to
36 be employed part-time or work reduced hours;

37 (g) The obligee's level of financial independence and the
38 financial impact of the obligor's retirement upon the obligee; and

39 (h) Any other relevant factors affecting the obligor's decision to
40 retire and the parties' respective financial positions.

41 If the obligor intends to retire but has not yet retired, the court
42 shall establish the conditions under which the modification or
43 termination of alimony will be effective.

44 (3) When a retirement application is filed in cases in which
45 there is an existing final alimony order or enforceable written
46 agreement established prior to the effective date of this act, the
47 obligor's reaching full retirement age as defined in this section shall
48 be deemed a good faith retirement age. Upon application by the

1 obligor to modify or terminate alimony, both the obligor's
2 application to the court for modification or termination of alimony
3 and the obligee's response to the application shall be accompanied
4 by current Case Information Statements or other relevant documents
5 as required by the Rules of Court, as well as the Case Information
6 Statements or other documents from the date of entry of the original
7 alimony award and from the date of any subsequent modification.
8 In making its determination, the court shall consider the ability of
9 the obligee to have saved adequately for retirement as well as the
10 following factors in order to determine whether the obligor, by a
11 preponderance of the evidence, has demonstrated that modification
12 or termination of alimony is appropriate:

13 (a) The age and health of the parties at the time of the
14 application;

15 (b) The obligor's field of employment and the generally
16 accepted age of retirement for those in that field;

17 (c) The age when the obligor becomes eligible for retirement at
18 the obligor's place of employment, including mandatory retirement
19 dates or the dates upon which continued employment would no
20 longer increase retirement benefits;

21 (d) The obligor's motives in retiring, including any pressures to
22 retire applied by the obligor's employer or incentive plans offered
23 by the obligor's employer;

24 (e) The reasonable expectations of the parties regarding
25 retirement during the marriage or civil union and at the time of the
26 divorce or dissolution;

27 (f) The ability of the obligor to maintain support payments
28 following retirement, including whether the obligor will continue to
29 be employed part-time or work reduced hours;

30 (g) The obligee's level of financial independence and the
31 financial impact of the obligor's retirement upon the obligee; and

32 (h) Any other relevant factors affecting the parties' respective
33 financial positions.

34 (4) The assets distributed between the parties at the time of the
35 entry of a final order of divorce or dissolution of a civil union shall
36 not be considered by the court for purposes of determining the
37 obligor's ability to pay alimony following retirement.

38 k. When a non-self-employed party seeks modification of
39 alimony, the court shall consider the following factors:

40 (1) The reasons for any loss of income;

41 (2) Under circumstances where there has been a loss of
42 employment, the obligor's documented efforts to obtain replacement
43 employment or to pursue an alternative occupation;

44 (3) Under circumstances where there has been a loss of
45 employment, whether the obligor is making a good faith effort to
46 find remunerative employment at any level and in any field;

1 (4) The income of the obligee; the obligee's circumstances; and
2 the obligee's reasonable efforts to obtain employment in view of
3 those circumstances and existing opportunities;

4 (5) The impact of the parties' health on their ability to obtain
5 employment;

6 (6) Any severance compensation or award made in connection
7 with any loss of employment;

8 (7) Any changes in the respective financial circumstances of the
9 parties that have occurred since the date of the order from which
10 modification is sought;

11 (8) The reasons for any change in either party's financial
12 circumstances since the date of the order from which modification
13 is sought, including, but not limited to, assessment of the extent to
14 which either party's financial circumstances at the time of the
15 application are attributable to enhanced earnings or financial
16 benefits received from any source since the date of the order;

17 (9) Whether a temporary remedy should be fashioned to provide
18 adjustment of the support award from which modification is sought,
19 and the terms of any such adjustment, pending continuing
20 employment investigations by the unemployed spouse or partner;
21 and

22 (10) Any other factor the court deems relevant to fairly and
23 equitably decide the application.

24 Under circumstances where the changed circumstances arise
25 from the loss of employment, the length of time a party has been
26 involuntarily unemployed or has had an involuntary reduction in
27 income shall not be the only factor considered by the court when an
28 application is filed by a non-self-employed party to reduce alimony
29 because of involuntary loss of employment. The court shall
30 determine the application based upon all of the enumerated factors,
31 however, no application shall be filed until a party has been
32 unemployed, or has not been able to return to or attain employment
33 at prior income levels, or both, for a period of 90 days. The court
34 shall have discretion to make any relief granted retroactive to the
35 date of the loss of employment or reduction of income.

36 l. When a self-employed party seeks modification of alimony
37 because of an involuntary reduction in income since the date of the
38 order from which modification is sought, then that party's
39 application for relief must include an analysis that sets forth the
40 economic and non-economic benefits the party receives from the
41 business, and which compares these economic and non-economic
42 benefits to those that were in existence at the time of the entry of
43 the order.

44 m. When assessing a temporary remedy, the court may
45 temporarily suspend support, or reduce support on terms; direct that
46 support be paid in some amount from assets pending further
47 proceedings; direct a periodic review; or enter any other order the
48 court finds appropriate to assure fairness and equity to both parties.

1 n. Alimony may be modified, suspended or terminated if the
2 payee cohabits with another person. Cohabitation involves a
3 mutually supportive, intimate personal relationship in which a
4 couple has undertaken duties and privileges that are commonly
5 associated with marriage or civil union but does not necessarily
6 maintain a single common household.

7 When assessing whether cohabitation is occurring, the court shall
8 consider the following:

9 (1) Intertwined finances such as joint bank accounts and other
10 joint holdings or liabilities;

11 (2) Sharing or joint responsibility for living expenses;

12 (3) Recognition of the relationship in the couple's social and
13 family circle;

14 (4) Living together, the frequency of contact, the duration of the
15 relationship, and other indicia of a mutually supportive intimate
16 personal relationship;

17 (5) Sharing household chores;

18 (6) Whether the recipient of alimony has received an
19 enforceable promise of support from another person within the
20 meaning of subsection h. of R.S.25:1-5; and

21 (7) All other relevant evidence.

22 In evaluating whether cohabitation is occurring and whether
23 alimony should be modified, suspended or terminated, the court
24 shall also consider the length of the relationship, whether the
25 recipient of alimony has received an economic benefit from the
26 relationship, and whether the recipient of alimony has supported or
27 subsidized the other cohabitant under circumstances sufficient to
28 entitle the supporting spouse to relief. A court may not find an
29 absence of cohabitation solely on grounds that the couple does not
30 live together on a full-time basis.

31 When modifying the duration and amount of an alimony award
32 based on cohabitation, the court shall consider the degree to which
33 the relationship has reduced the financial needs of the supported
34 spouse.

35 As used in this section:

36 "Full retirement age" shall mean the age at which a person is
37 eligible to receive full retirement for full retirement benefits under
38 section 216 of the federal Social Security Act (42 U.S.C. s.416).
39 (cf: P.L.2014, c.42, s.1)

40

41 2. This act shall take effect immediately and shall not be
42 construed to modify any provision which relates to cohabitation that
43 has been ordered or agreed upon, or other specifically bargained for
44 contractual provisions that have been incorporated into:

45 a. a final judgment of divorce or dissolution;

46 b. a final order that has concluded post-judgment litigation; or

47 c. any enforceable written agreement between the parties.

1 STATEMENT

2

3 This bill would amend N.J.S.2A:34-23 to enable the court to
4 modify an alimony award based on changed circumstances resulting
5 from cohabitation of a supported spouse.

6 N.J.S.2A:34-23 defines cohabitation as a mutually supportive,
7 intimate personal relationship in which a couple has undertaken
8 duties and privileges that are commonly associated with marriage or
9 civil union but does not necessarily maintain a single common
10 household. The statute sets forth the factors to be considered by the
11 court when assessing whether cohabitation is occurring. The statute
12 also provides that a court may not find an absence of cohabitation
13 solely on grounds that the couple does not live together on a full-
14 time basis.

15 Currently, a court may suspend or terminate an alimony award if
16 a payee cohabits with another person. However, an alimony award
17 may not be modified as a result of cohabitation. Under the bill, the
18 court would be able to modify an alimony award as an alternative
19 remedy to suspension or termination.

20 The factors to be considered by the court when determining
21 whether cohabitation is occurring and whether alimony should be
22 modified, suspended or terminated are enumerated in subsection n.
23 of N.J.S.2A:34-23. Along with these factors, the bill would also
24 require the court to consider whether the recipient of alimony has
25 received an economic benefit from the relationship, and whether the
26 recipient of alimony has supported or subsidized the other
27 cohabitant under circumstances sufficient to entitle the supporting
28 spouse to relief.

29 When modifying the duration and amount of an alimony award
30 as a result of cohabitation, the bill would require the court to
31 consider the degree to which the relationship has reduced the
32 financial needs of the supported spouse.

33 The bill would take effect immediately and would not be
34 construed to modify any provision which relates to cohabitation that
35 has been ordered or agreed upon, or other specifically bargained for
36 contractual provisions that have been incorporated into a final
37 judgment of divorce or dissolution; a final order that has concluded
38 post-judgment litigation; or any enforceable written agreement
39 between the parties.