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# Legal Matters®

## Modern love clouds end of alimony

**M**any divorce agreements say that a spouse can stop paying alimony if the other spouse remarries or begins living with a romantic partner. That sounds simple – but in today's world, romantic relationships can be anything but simple. Sometimes, as on Facebook, the best way to describe a new relationship is "it's complicated" – and whether a spouse can stop paying alimony can be complicated, too.

Here are some examples:

◆ Steven and Lorraine Robitzski divorced in 2004, and Steven was ordered to pay Lorraine \$2,500 a month in alimony, unless she cohabited with someone. Lorraine found a new boyfriend, and Steven went to court claiming that they were living together.

According to Steven, Lorraine and her new beau spent about 100 nights a year together, they held themselves out as a couple at family and social activities and on Facebook, and the couple's children referred to the boyfriend as "Pap Thom."

But a New Jersey appeals court said this wasn't "cohabitation." The court said there was no evidence the couple shared a home, that their finances were intertwined, or that the boyfriend was financially supporting Lorraine. There was also no evidence that they shared household chores (although the boyfriend did help Lorraine to shovel snow).

As a result, Steven must continue to pay, although a judge said he could try again if he could find more evidence of cohabitation.

◆ Next door in Delaware, though, the state's highest court reached a



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different result.

Joseph Paul claimed he could stop paying alimony to his ex-wife Shannon because she was cohabiting with a new boyfriend named Fletcher. Joseph hired a private investigator to tail Shannon and Fletcher, and the investigator saw Fletcher's car at Shannon's house on 25 out of 37 days. He also spotted Fletcher doing domestic chores for Shannon, including feeding her cat, taking out the trash, and doing yardwork. Also, he saw Fletcher using her garage code.

On the other hand, the couple had separate homes, and Fletcher didn't keep any clothes or other personal property at Shannon's. The

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## ‘Buy-sell’ agreements should be reviewed by a family lawyer

It’s very common for small businesses to have “buy-sell” agreements. These say that if one owner leaves, dies, or gets divorced, the other owners can buy out that owner’s interest. The purpose is to make sure that if something happens to one owner, the other owners can continue to operate the business without

having an ex-spouse, child, or stranger as an unwanted partner.

If you have such an agreement or are thinking of signing one, it’s a very good idea to have it reviewed by a family law

attorney. This is true if *any* of the owners might someday get divorced – even if you personally are unlikely to get divorced or aren’t even married.

Here’s why: Buy-sell agreements typically set a price at which the other owners can buy the owner’s shares, or a method for determining the price, such as book value, a multiple of current annual profits, an independent appraiser’s estimate, or a board

valuation made in good faith.

But there’s a conflict between the owners, who generally want to set a lower buyout price, and a divorcing spouse, who will want to place as high a value on the business interest as possible.

If the buyout formula is out of step with current divorce law, then a divorcing member could be caught in a trap: He or she could have to compensate an ex-spouse based on a higher value for the business, but not have enough income from selling his or her share to do so.

This creates an incentive for the divorcing owner to challenge the validity of the buyout provisions in court.

Another issue is that many buy-sell agreements require owners who get married to sign a prenuptial agreement limiting a spouse’s right to receive an interest in the business at divorce. But any such requirement needs to be squared with the current law on prenuptial agreements.

For instance, some buy-sell agreements might require owners to include provisions that are legally unenforceable, or that will result in the prenuptial agreement as a whole being invalidated. And if the terms of the required prenu are too draconian, it might cause a potential spouse to walk away from the marriage, or make excessive demands in return – which could also prompt an owner to challenge the buy-sell agreement in court.



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If the buyout formula in a contract is out of step with current divorce law, then a divorcing business owner could be caught in a trap.

## Live-in partner is awarded partial custody of child

A mother’s live-in romantic partner who developed a strong relationship with her child can get partial custody of the child after their breakup, a Pennsylvania court recently decided.

The mother gave birth to the child in 2007 and quickly separated from the child’s father. She then began a relationship with a woman known as C.B.

C.B. became very involved in the child’s life, participating in his medical appointments, helping select his schools, and communicating with his teachers and doctors. The child also had a close relationship with C.B.’s extended family, referring to her father as “Pappy” and her siblings as “aunt” and “uncle.” C.B.’s family members babysat the child, and C.B.’s mother was the child’s emergency contact.

The couple separated after four years, but C.B. continued looking after the child one night a week and every other weekend.

The mother then married a man and cut off C.B.’s relationship to the child. So C.B. went to court.

The mother argued that C.B. had no right to custody because she wasn’t the child’s parent or relative. But the court nevertheless gave C.B. partial custody for one weekend a month, gradually phasing it down to one day per month.

The court said that while a parent’s wishes should generally be honored, this case was different because C.B. had strong bonds to the child, had lived with him and provided care and affection, and had been seen as a parent in the child’s eyes.

# You're splitting up – who keeps the engagement ring?

So it wasn't "until death do us part" after all, but there's still that dazzling engagement ring. He wants it back; she wants to keep it. Who wins?

As with many things in the law, it depends on the facts, and it also depends on the state.

In some states, such as California, accepting an engagement ring is usually viewed as a promise to marry someone. Once a woman has said "I do," the promise has been fulfilled and it's hers to keep, even if the couple later get divorced. On the other hand, if the bride calls off the wedding before it happens, she hasn't satisfied her end of the bargain, and she would be expected to give the ring back.

Other states focus on who's at fault. For example, if a bride backs out of a wedding



because she discovers her fiancé was unfaithful during their engagement, she might get to keep the ring.

Still other states consider an engagement ring to be a simple gift – so it becomes the property of the bride-to-be once she says "yes," regardless of what happens next.

But there are always exceptions. For instance, suppose the groom gave the bride his great-grandmother's engagement ring, which had been passed down through the family. In some states, the ring would be considered a family heirloom, which was given to the bride only on condition of marriage. So if the marriage is called off, or the couple get divorced, she'd be expected to return it.

## We welcome your referrals.

We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

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## Modern love often muddies the end of alimony

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couple also pursued different activities during the day.

But the Delaware court said this was enough to end Joseph's alimony obligation, because Shannon and Fletcher were living together "with some degree of continuity."

◆ Yan Assoun's 1997 divorce decree ordered him to pay alimony of as much as \$380,000 a year unless his wife Anais remarried. The decree didn't mention cohabitation – but when Anais moved in with a new boyfriend, Yan went to court and argued that living together counted because it amounted to an "informal" marriage.

Anais and the new boyfriend acknowledged that they lived together as husband and wife, and held themselves out to others as a married couple. But a Texas appeals court said that wasn't good enough – unless the couple were actually legally married, or had agreed to get legally married, Yan was still on the hook for the alimony payments.

◆ David and Cathleen Quinn divorced in 2006, and David was ordered to pay \$68,000 a year in alimony. The divorce agreement said that the alimony would end if Cathleen started cohabiting with someone.

In 2008, Cathleen got a new boyfriend, and David asked to stop paying alimony. Although Cathleen and the boyfriend maintained separate homes, a judge determined that they did so only for the sake of appearances, and the couple were in fact cohabiting.

In 2010, Cathleen broke up with the boyfriend. This

time, a judge said that since Cathleen was no longer cohabiting with someone, David should have to resume paying alimony.

But the New Jersey Supreme Court disagreed. It said that under the divorce agreement, once Cathleen started living with someone else, alimony was "terminated." There was nothing in the agreement that said alimony could be started up again if Cathleen dumped her boyfriend. Therefore, David was permanently free of alimony, and Cathleen lost both her boyfriend and her support payments.

◆ Chester Chin's older divorce agreement said he could stop paying alimony if his wife remarried, but it didn't mention cohabitation. However, in 2011, Massachusetts enacted a new law saying alimony could be ended if the recipient started living with a romantic partner.

Chin went to court and said he could stop paying because his wife was cohabiting. But he was out of luck, because the Massachusetts Supreme Court said the new law didn't apply to divorce settlements that were signed before it went into effect.

As you can see, when it comes to cohabitation issues, "it's complicated." We'd be happy to help you if you have any questions about how the law applies to your situation.



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## Moving out? Record your home on your smartphone

If you're getting divorced and you'll be moving out while your spouse stays in the house, it's a good idea to use your smartphone to make a video record of the home at the time you left it.

For one thing, you might not be able to take everything

that's important to you with you at the time you move, especially if you're going to a smaller place. And once you move out, you'll have little control over the home's maintenance and upkeep.

As a result, whether accidentally

or on purpose, your spouse might throw out, destroy or sell belongings of yours that have significant monetary or sentimental value. Your spouse might also let the house fall into disrepair, or there might be some damage to the home, which could lower its value.

Without a video record of the condition of the home at the time you left, it can be hard to establish what things were there and what issues are your spouse's responsibility.

At a time when nobody else is home, record yourself walking through the house – both inside and outside – noting the condition of the property and filming any items that are important to you and discussing them on the video. This can be very helpful to an appraiser later.

You should also include a shot of that day's newspaper, noting the date, so your spouse can't claim the inventory was made earlier than it really was.

