

## Are You “Cohabiting” with Your Girlfriend/Boyfriend Such that Your Alimony May Terminate?

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[Virginia Code Section 20-109](#) states that spousal support/alimony shall terminate if the recipient spouse “has been habitually cohabiting with another person in a relationship analogous to a marriage for one year or more.” If parties go to trial (as opposed to settling their case via a Property Settlement Agreement), then Section 20-109 will automatically apply. If the parties settle their divorce case via a Property Settlement Agreement, then the terms of Section 20-109 will apply unless the Agreement expressly states that alimony will not terminate upon the recipient’s cohabitation. The following four factors generally are considered relevant to the court’s determination as to whether the alimony recipient is “cohabiting in a relationship analogous to a marriage”: (1) The recipient ex-spouse and his/her paramour must share the same residence – if the ex-spouse and the alleged girlfriend/boyfriend are not living together in the same house, then cohabitation cannot be proven; (2) intimate or romantic involvement, which does not necessarily require sexual intimacy; (3) receipt of financial contributions from the paramour to the recipient ex-spouse; and (4) duration and continuity of the relationship and other indicia of permanency; no bright line test of duration has been established by the case law. None of the above four categories, standing alone, is determinative to establish cohabitation in a relationship analogous to a marriage; rather, the trial court’s decision must be based upon evidence concerning the overall nature of the relationship, not merely a piecemeal consideration of the above factors; and it is within the trial court’s discretion to determine what evidentiary weight to accord each of the factors.

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