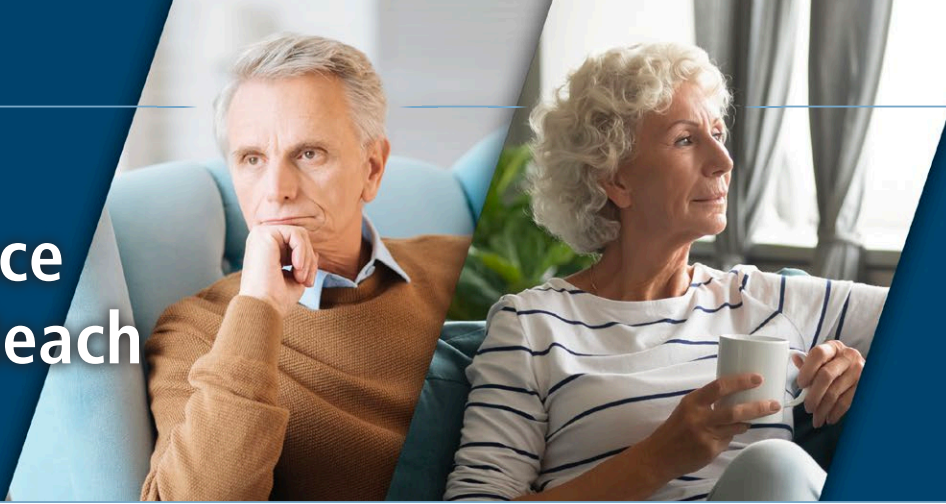


Retirement and Spousal Maintenance As Baby Boomers Reach Their Golden Years



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The U.S. is in the midst of a profound demographic shift — nearly 77 million baby boomers will reach average retirement age by 2030. Retirement is an exciting milestone, but it also signals a change in financial circumstances. For baby boomers approaching retirement age and still paying spousal maintenance, now is the time to seek legal guidance. Generally, leaving the workforce does not automatically terminate a spousal maintenance obligation.

The Standard to Modify Spousal Maintenance

In Minnesota, a party seeking to modify or terminate spousal maintenance must satisfy a two-prong test. The moving party must demonstrate that: (1) a substantial change in financial circumstances has occurred; and (2) the substantial change in circumstances renders the original spousal maintenance award both unreasonable and unfair.

For most, there will be no greater change to one's financial circumstances than retirement. But is that change sufficient to modify or terminate spousal maintenance? The short answer is — it depends.

"Good Faith" Versus "Bad Faith" Retirement

An obligor who experiences a substantial reduction in income after retirement may be able to satisfy the two-prong test above. However, Minnesota law requires additional analysis when a party *voluntarily* creates a change in financial circumstances, including when an obligor voluntarily retires.

Specifically, the court will examine the motivation underlying the obligor's decision to retire by analyzing the following factors:

- the age and health of the retiring party;
- the employment history of the retiring party;

- the employer's retirement policies and benefits;
- the prevailing economic conditions at the time of the party's retirement; and;
- the expectations of both parties regarding retirement at the time of the divorce, particularly in cases involving an early retirement.

If the obligor's decision to retire was motivated by a desire to reduce or end spousal maintenance, the court may conclude the obligor is retiring in bad faith and decline to modify spousal maintenance. However, if the obligor is retiring at a normal or customary retirement age, the court may conclude the obligor is retiring in good faith and reduce or terminate spousal maintenance accordingly.

Balancing Act

In all spousal maintenance cases, the court must balance the needs of the spouse receiving spousal maintenance against the financial condition of the spouse required to pay spousal maintenance.

When an obligor retires, the court considers all sources of income available to the obligor after retirement, which may include Social Security payments, investment income from assets awarded in the divorce, and even investment income derived from assets acquired after the divorce.

Likewise, the party receiving spousal maintenance must demonstrate an ongoing need for spousal maintenance. In assessing an obligee's need, the court considers the obligee's financial resources, whether or not investments were prudently invested, and the obligee's reasonable living expenses.

Conclusion

Whether modification or termination of spousal maintenance is warranted depends on the unique facts of each case. Judicial officers in family court have broad discretion, and the law governing this topic continues to evolve. If you have questions about your spousal maintenance obligation upon retirement, please contact your family law attorney and Moss & Barnett.