

The Effect Living with Someone May Have on Your Spousal Support

If you are a party receiving spousal support it is important for you to understand how your actions could affect the amount of spousal support to which you are entitled. One such action is moving in with someone. If the court considers your living with someone *cohabitating* within the meaning of the family code or you are receiving a significant financial contribution from the person you have moved in with, it could result in a downward modification of your spousal support.

The Effects of §4323 Cohabitation

California Family Code §4323 states that there is a rebuttable presumption, affecting the burden of proof of decreased need for spousal support if the supported party is cohabitating with a non-marital partner. The court in *re: Marriage of Denney (1981) 115 Cal. App. 3d 543* held that the burden is on the supporting party to establish that there is cohabitation. If this is established the burden then shifts to the supported party to present evidence to overcome the presumption that the need for support has decreased. What this means is that if the supporting party is able to establish that you are cohabitating with a non-marital partner, the court will require you to prove that you do not have a decreased need for support. If you are unable to do so the court will adjust your spousal support to match your new level of need.

Note: Cohabitation within the purview of *Family Code §4323* does not mean simply living with someone. This section is not meant to apply to a typical roommate or boarder scenario. Cohabiting is meant to apply to individuals living together who are involved in a sexual relationship, a romantic involvement or a homemaker-companion relationship.

The Effects of Receiving Financial Contributions

Even if *California Family Code §4323* does not apply to your present living situation, your spousal support order may still be modified. Although having a roommate or boarder may not qualify as cohabitation, depending on the financial relationship that exists between you, the court may still adjust your spousal support. If, for example, you receive significant financial contributions from the person you are living with, the court may determine that you have a decreased need for support.