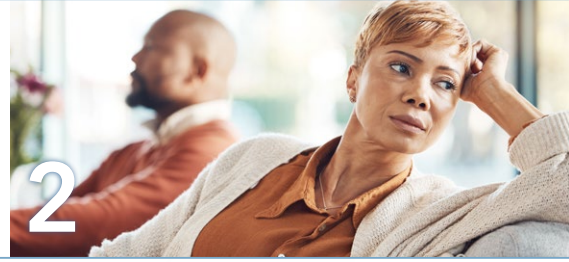


Moss & Barnett Advocate

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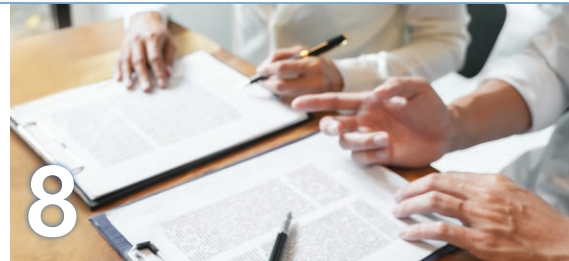
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WHY THIS ISSUE:

Family law is a uniquely personal area of the law and often encompasses both social and financial issues. Recently, the Minnesota State Legislature amended various statutes related to spousal maintenance, antenuptial agreements, and other issues impacting families. Many of these changes take effect on August 1, 2024. This Special Family Law Edition provides an overview of the recent changes to the family law statutes – empowering our clients to make informed decisions. Quality legal service is our profession, our business, and our privilege. We are grateful for your trust in us, and we look forward to serving you.

Brave New World: Spousal Maintenance Laws Revised



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The Minnesota State Legislature has undertaken a significant overhaul of the family law statutes, due to take effect August 1, 2024. This article will serve as your guide to the upcoming changes and understanding their impact on spousal maintenance in Minnesota.

New Guidelines for Duration

One of the most significant revisions to the spousal maintenance statute is the new guideline on duration. After August 1, 2024, spousal maintenance awards will be characterized as either “transitional” or “indefinite,” based on the length of the marriage.

0-4 Years of Marriage	Rebuttable Presumption for No Spousal Maintenance
5-19 Years of Marriage	Rebuttable Presumption for Transitional Spousal Maintenance to Last No Longer than Half the Length of the Marriage
20+ Years of Marriage	Rebuttable Presumption for Indefinite Spousal Maintenance

This change is intended to provide much needed clarity to families and practitioners alike. However, because duration is now directly tied to the date of commencement, deciding when to file could have a significant impact in your family law case.

What was previously deemed “temporary” maintenance will now be characterized as “transitional” maintenance and an award of “permanent” maintenance will now be known as “indefinite”

maintenance. Whether this change to the statute is sufficient in and of itself to modify a prior spousal maintenance award is yet to be determined.

Amendments to Factors Governing Amount

The amount of spousal maintenance continues to be governed by the factors listed in Minn. Stat. § 518.552, subd. 2, but with a few important changes:

Factor 3	The Legislature expanded factor 3, requiring the Court to consider the extent to which the marital standard of living was supported by debt.
Factors 4 and 5	The Legislature combined factors 4 and 5, so the Court must now consider the earnings, seniority, and other employment opportunities forgone by the spouse seeking maintenance to support the other spouse or children. Notably, this did not change the Court’s obligation to consider the duration of the marriage, the length of absence from employment, and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished.
Factor 6	The Legislature expanded factor 6, requiring the Court to consider the health of the parties rather than just the party seeking spousal maintenance. The Legislature also expanded the definition of health to include the mental and chemical health of the parties, in addition to their age and physical health.
Factor 8	The Legislature eliminated the language in factor 8 governing the acquisition, preservation, depreciation, or appreciation in value of marital property. Instead, the Court is only to consider the contribution of a spouse to furtherance of the other party’s employment or business.
Factor 9	The Legislature added a new factor, directing the Court to consider the need and ability of each spouse to prepare for retirement and the anticipated time of retirement.

If you have questions regarding an existing spousal maintenance order, the family law attorneys at Moss & Barnett are available to discuss whether a modification may be appropriate for your circumstance.

Something Old, Something New: Changes to Minnesota Law on Antenuptial Agreements



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Minnesota has long recognized the right of engaged couples to enter into antenuptial agreements — more casually referred to as “prenups.” While antenuptial agreements were once unique to celebrity couples and the ultra-wealthy, these agreements have become increasingly commonplace for engaged couples from all walks of life.

Importantly, Minnesota law on antenuptial agreements is changing, with an effective date of August 1, 2024. Before signing on the dotted line and saying “I do,” couples will need to understand the following changes to Minnesota law on antenuptial agreements and ensure their agreement complies with these changes.

“Full and Fair” Financial Disclosure

Minnesota law has always required parties to an antenuptial agreement to make a full and fair disclosure of their income and assets to each other. But the relevant statute did not define what exactly qualifies as a “full and fair” disclosure.

Under the amended statute, a “full and fair disclosure” requires the parties to an antenuptial agreement to provide “a reasonably accurate description of all material facts of their income and good faith estimates of the value of their property” and disclose the basis for their financial disclosures. In other words, parties to an antenuptial agreement must provide a detailed financial net worth statement that also identifies the source documents used to obtain the information provided (e.g., account statements, appraisals, etc.).

Timing

Minnesota law previously provided little guidance on the timing of signing an antenuptial agreement, only requiring the agreement to be executed at least the day before solemnization of the marriage.

The amended statute provides that an antenuptial agreement is presumed enforceable if it is entered into at least seven days before the marriage. Agreements that are entered into less than seven days before the marriage are **not** presumed to be enforceable, and in those cases, the party seeking to enforce the agreement has the burden of proof.

Procedural Fairness

Antenuptial agreements must be procedurally fair to be enforceable. Courts previously applied a different procedural fairness analysis to antenuptial agreements addressing the division of nonmarital property than those addressing the division of marital property.

With the changes to Minnesota law, the same procedural fairness analysis applies to all antenuptial agreements. An antenuptial agreement is procedurally fair if:

- the parties made a full and fair disclosure of their income and property to each other;
- each party had a meaningful opportunity to consult with an attorney;
- the agreement is in writing, notarized, and executed in the presence of two witnesses;
- the agreement is entered into voluntarily and free of duress; and
- the agreement is signed at least seven days prior to the marriage.

Further, Minnesota common law previously required that an antenuptial agreement be supported by adequate consideration to be procedurally fair. However, the amended statute provides that the marriage itself is adequate consideration for the agreement.

“Something Old, Something New” Continued on Page 9

Meet Our Family Law Team

Moss & Barnett is distinctive among full-service law firms for our nationally recognized family law practice. Our lawyers are regularly included in *Minnesota Super Lawyers* and *The Best Lawyers in America* and are frequent contributors to state and national publications and seminars.

Family law cases often implicate other legal issues related to businesses, trusts and estates, retirement and employment benefits, real property, and tax law. Moss & Barnett family law clients benefit from our access to in-depth resources to address these issues. Our Family Law Team has extensive experience collaborating with attorneys in other practice areas and managing complex financial questions with financial neutrals and experts, including business valuations, nonmarital tracings, and calculating cash flows and spousal maintenance.

We represent clients with family law matters such as:

- Marriage dissolutions and legal separations
- Division of complex assets and executive compensation
- Paternity proceedings
- Determining and modifying child support and spousal maintenance orders
- Parenting time and custody agreements and proceedings
- Antenuptial, postnuptial, and cohabitation agreements
- Family law appeals
- Hague Convention proceedings regarding children
- Harassment restraining orders and orders for protection
- Uncontested stepparent adoptions

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Jana is a nationally recognized family law practitioner who serves as a compassionate advocate for clients and their children. She is knowledgeable, responsive, and committed to understanding her clients' needs to achieve positive outcomes. Jana strives to resolve matters outside the courtroom to minimize distress and disruption, but when the parties cannot reach a consensus, she is fully prepared to represent her clients' interests at trial. She believes that every client deserves dedicated, competent guidance throughout their family court proceeding, culminating in a conclusion that prepares her clients to confidently move forward. Jana is a Qualified Neutral under Rule 114 of the Minnesota General Rules of Practice, available to offer families ADR services such as family law mediation and financial early neutral evaluations.

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Jim assist clients in a variety of matters, including complex litigation and settlement of marital and non-marital assets, complex non-marital tracing, spousal maintenance, child support, business valuation disputes, settlement negotiations, appeals, premarital and postmarital agreements, custody settlement, and litigation. He brings a compassionate approach to difficult family law cases in both alternative dispute resolution forums and litigation. Jim has worked with children in numerous contexts over the years and is sensitive to the emotional challenges presented by difficult family situations. He works diligently to minimize these potentially stressful situations and produce favorable results for his clients. In addition to participating in landmark family law cases in Minnesota, he contributes articles on family law topics to professional journals and lectures on a multitude of family law issues.

Moss & Barnett's Family Law Team offers a unique blend of creativity, common sense, and compassion, backed by decades of experience in the most personal of legal practices.



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Brittney assists clients in all family-related matters, including parenting, support, division of assets, stepparent and same-sex adoptions, antenuptial agreements, and many other issues confronting modern families. She has extensive experience with cases involving complex social and financial issues at both the trial and appellate court levels. Prior to joining Moss & Barnett, Brittney clerked for the Honorable Anne K. McKeig and the Honorable Jane B. Ranum in Hennepin County Family Court, gaining invaluable insight into the court's perspective on family law litigation. Brittney previously worked with the Family Court Enhancement Project and on legal and legislative projects related to the Minnesota Domestic Abuse Act. Currently, she contributes time and experience to appellate domestic abuse cases, and she has written and presented extensively on domestic violence's impact on family law matters.



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April assists clients in all family law related matters, including dissolution proceedings, paternity, custody, parenting time, child support, spousal maintenance, orders for protection, and distribution of marital assets and debts. Prior to joining Moss & Barnett, April clerked for the Honorable Elizabeth V. Cutter in Hennepin County Family Court, gaining valuable insight into the court's perspective on family law litigation. During law school, April earned honors for legal writing, was a staff member and online editor of the *Minnesota Law Review*, and served as a student director of the university's Family Law Clinic.



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Debra is committed to compassionate advocacy and understands that creating a new normal for a transitioning family is not a one-size-fits-all approach. She assists and strategizes with clients to develop creative and effective solutions to complex family matters, including dissolution proceedings, paternity, custody, parenting time, child support, spousal maintenance, orders for protection, distribution of marital assets and debts, and the many other issues today's families face. Debra is a Qualified Neutral under Rule 114 of the Minnesota General Rules of Practice, available to offer family law mediation in person or remotely.

Minnesota Extreme Risk Protection Orders and Family Law



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Trigger Warning: This article references themes related to domestic violence, sexual violence, stalking, and suicide.

Engaging in the family court process can be stressful and emotional for all involved. Any changing family dynamic that also includes a pattern of abuse – whether physical, emotional, verbal, financial, spiritual, coercive in nature, etc. – requires an extra level of care while navigating the legal process. Doing so keeps safety at the helm and supports victim’s autonomy in the process with a goal of fair and equitable outcomes. Family law attorneys should be screening every potential client for signs of a pattern of abusive and controlling behaviors, along with taking inventory of a household’s access to firearms.

According to the *Star Tribune*, Violence Free Minnesota (VFMN) tracked at least thirty-nine homicides related to intimate partner violence and relationship violence in Minnesota in 2023.¹ Twenty-nine were killed by a current or former intimate partner, and ten were bystanders or intervenors killed in domestic violence related events.² The majority of the deaths were gun-related homicides.

To reduce high-risk behaviors escalating to homicides and suicides, Minnesota enacted a law to allow family/household members, law enforcement, or city/county attorneys to intervene before tragedy strikes.

On January 1, 2024, Minnesota’s new law, Extreme Risk Protective Orders (ERPO), went into effect. This law was modeled after the State’s two other civil protective orders – Orders for Protection (OFP) and Harassment Restraining Orders (HRO).

Evaluating options to maintain one’s safety and a loved one’s safety is imperative, especially when a spouse or co-parent with a history of violence, threats of self-harm, or harm to others has escalated in divorce or custody disputes.

Extreme Risk Protective Orders

Oftentimes laws are reactionary solutions – harm is committed and *then* the law reacts to “correct” the harm. However, preventing tragedy is the primary goal in Minnesota’s “Red Flag” law. It is a tool to address high-risk behavior. ERPOs are temporary in nature and allow intervention when a person poses a risk of **significant danger** to themselves or others. When granted, the Court may order the removal of firearms and prevent temporary possession of firearms.

Things to Keep in Mind before Applying for an ERPO

A person seeking relief (also known as “Petitioner”) must allege in their petition that the Respondent presents an **immediate and present danger** of either bodily harm to others or taking their own life. To the best of Petitioner’s knowledge, Petitioner must allege the types and location of any firearms believed to be in the possession of Respondent. If a Petitioner wishes to appear remotely (by video conference) for all Court hearings, Petitioner should make that request when filing the petition. If Petitioner’s virtual participation is denied, Petitioner may refile the petition in the county where the Petitioner resides or offices.

Along with the petition, Petitioner must include a sworn statement made under oath (“Affidavit”) stating facts and circumstances that justify the Court granting the ERPO. Filing for an ERPO does not prevent a Petitioner from also filing for other civil protective orders to mitigate safety concerns. Once the ERPO is filed with the Court, either Petitioner or Respondent may request a hearing. At the hearing, Petitioner must prove by **clear and convincing evidence** that Respondent poses a **significant danger** to the others or **significant risk of suicide** by possessing firearms. If the Court determines that Respondent poses a significant danger or risk of suicide, the Court must minimally maintain the ERPO effective for at least six months but not more than a year, subject to extension request.



Different Types of Civil Protective Orders in Minnesota

In Minnesota, eligible persons may seek a civil protective order to keep a current or former intimate partner from abuse, threats of abuse, nonconsensual sexual contact, harassment, and stalking. The chart below is an adaptation developed by Standpoint (www.standpointmn.org) that identifies the types of protective orders.

Eligibility	Order for Protection (OPF) (Minn. Stat. 518B.01)	Harassment Restraining Order (HRO) (Minn. Stat. 609.748)	Extreme Risk Protection Order (ERPO) (Minn. Stat. 624.7171-7178)
Who Can Seek Order	Victim/Guardian of Minor Victim	Victim/Guardian of Minor Victim	Family/Household Member; Guardian of Respondent; Chief Law Enforcement Officer; or City/County Attorney
Relationship to Respondent	Family/Household Member	No special relationship required	No special relationship required
Where to File Petition for Order	County where either party resides, abuse occurred, or county of adjacent family court proceeding	County where either party resides, or harassment occurred	County where Respondent resides unless request to appear virtually is denied
Allegations in Petition Must Include	<ul style="list-style-type: none"> • Physical harm, bodily injury or assault; • Infliction of fear of imminent harm, injury or assault; • Terroristic threats; • Criminal sexual conduct; • Sexual extortion; or • Interference with an emergency call 	<ul style="list-style-type: none"> • Single incident of physical or sexual assault; • Repeated incidents of intrusive or unwanted acts, words, gestures intended to have substantial adverse effect on the safety, security, privacy of another; • Single incident of nonconsensual dissemination of private sexual images; • Single incident of using another's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person; • Targeted residential picketing; or • Pattern of attending public events after being notified their presence is harassing 	<ul style="list-style-type: none"> • Respondent poses a significant danger of bodily harm to other persons; or • Respondent is at significant risk of suicide by possessing a firearm
Possible Relief	Temporary possession of property, custody, parenting time, child support, spousal maintenance, exclusions from house, work, daycare, school, no possession of firearms	No contact and no harassment	No possession of firearms

New Chapter Ahead: Retirement and Modification of Spousal Maintenance



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There are various reasons why former spouses may seek to modify the amount and duration of a maintenance obligation. Minnesota law provides different options to seek a modification of spousal maintenance, including retirement, which the Minnesota Legislature has now strengthened as a justification for reducing or terminating spousal maintenance. The Legislature has now defined a normal retirement age for spousal maintenance modification purposes and the assets that parties have available to them to meet expenses in their retirement.

Effective August 1, 2024, Minnesota law now outlines special considerations for a former spouse who is obligated to pay spousal maintenance (obligor or payor) seeking a modification of their obligation when entering their next chapter in life, retirement. Under Minnesota law, a “modification” of spousal maintenance may consist of a reduction, suspension, reservation, or termination of maintenance.

Before rushing to the courthouse to file a motion to modify based on a pending retirement or retirement, former spouses will need to understand the following changes to Minnesota law on spousal maintenance modifications related to retirement.

“Normal” Retirement Age

The Minnesota Legislature has now tied the definition of a normal retirement age for the modification of spousal maintenance to the definition of a normal retirement age in the Social Security Act. Under the Social Security Act, to receive full benefits one must reach **full retirement age**, which is currently age 66 for

people born prior to 1954 and 67 for most everyone else. When considering a modification of spousal maintenance based on retirement, the Court must consider if the payor is eligible to receive full retirement benefits based on their age. Alternatively, the Court must consider the payor’s occupation and the **customary age** in that occupation at which retirement occurs.

To Use Retirement Assets or Not?

Prior to the new law, there was conflict on whether a former spouse had to use their retirement assets during retirement or only the income they could earn on their retirement assets. The Minnesota Legislature has now determined that once the obligor has reached the age to receive full retirement benefits under the Social Security Act or age customary to obligor’s occupation, that the obligor will **use both income and assets** to meet their needs.

Planning Ahead: Future Retirement Date

Additionally, the new law also allows the payor to be preemptive in seeking a modification request. Previously, the payor had to wait until retirement commenced to seek relief. Now, payors who have a specific date by which retirement will begin, may bring a motion for the Court to consider a maintenance modification motion. If a modification is granted, then the Court may make the modification effective as of the actual retirement date.

Conclusion

The above inclusion to Minnesota’s spousal maintenance statute is intended to recognize good-faith modification requests made by obligors/payors based on retirement. Modification based on retirement is not guaranteed, but a Court may modify if (1) retirement is in good-faith, (2) at the age of full retirement under the Social Security Act or customary age designated by occupation/industry standard reached, (3) prudent management of their assets since the divorce, and (4) financial resources available to both former spouses. Moss & Barnett’s Family Law attorneys are available and ready to assist with spousal maintenance modification claims.

Substantive Fairness

An antenuptial agreement must be substantively fair to be enforceable. A court's substantive fairness analysis was previously guided exclusively by case law.

The amended statute now delineates the required "substantive fairness" analysis. An agreement is substantively unfair if it is unconscionable to a party based on its terms or drastically changed circumstances that were not foreseen when the agreement was executed so that enforcement of the agreement would not match the parties' reasonable expectations at the time of the agreement. Notably, the fact that an agreement deviates from Minnesota law on property division or spousal maintenance does not make it unconscionable.

Conclusion

The above changes to Minnesota's antenuptial agreement statute are intended to provide greater certainty regarding what is required for an antenuptial agreement to be enforceable.

For assistance with preparing, reviewing, or negotiating an antenuptial agreement, please contact one of Moss & Barnett's Family Law attorneys.

Conclusion

The purpose of the Extreme Risk Protection Order is preventative and temporary in nature to reduce the likelihood of Respondent's significant danger of bodily harm to others or self. Recognizing and understanding the overlap between civil protection orders as discussed and family law matters may be a matter of life and death.

For help or services, call 800-799-7233 or text START to 88788 to connect with someone from the National Domestic Violence Hotline or visit www.thehotline.org/get-help/ for additional resources.

¹ Hughes, Elliot (2024, July 9). *Man dead in homicide at St. Paul Home that has seen Frequent Police Contacts*. StarTribune.

www.startribune.com/police-on-scene-of-homicide-in-st-paul/600378668/

² Minnesota Women's Press, (2024, February 20). *Highest Known Number of Minnesotans Killed From Domestic Violence in 2023*. Minnesota Women's Press (womenspress.com).

www.womenspress.com/highest-known-number-of-minnesotans-killed-from-domestic-violence-in-2023/



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