

DRAFTING AGREEMENTS IN 2019

EMERGING ISSUES IN FAMILY LAW

PANELISTS

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Premarital Agreements in Pennsylvania are governed by §3106 of the Pennsylvania Divorce Code.

(a) GENERAL RULE.—The burden of proof to set aside a premarital agreement shall be upon the party alleging the agreement to be unenforceable. A premarital agreement shall not be enforceable if the party seeking to set aside the agreement proves, by clear and convincing evidence, that:

- (1) the party did not execute the agreement voluntarily; or
- (2) the party, before execution of the agreement:
 - (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
 - (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
 - (iii) did not have an adequate knowledge of the property or financial obligations of the other party.

- (b) DEFINITION.—As used in Section 3106, the term “premarital agreement” means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.
- A premarital agreement is presumptively valid and binding upon the parties. The burden of proving the invalidity rests upon the party who alleges the agreement is invalid.
- Unless there has been fraud, misrepresentation, or duress, the provisions of the Agreement are binding.

RELEVANT CASES:

Hamilton v. Hamilton, 591 A2d 720 (Pa.Super.1991)

Simeone v. Simeone, 581 A2d 162 (Pa.1990)

Waiver of Disclosure Clause:

Both parties have determined that they have sufficient information and knowledge of:

- (a) Property owned by the other party as of the date of this agreement;
- (b) The financial situation and affairs of each party as of the date of this agreement;
- (c) The expectancies of each party;
- (d) The opportunity of each for future acquisition of capital assets and income;
- (e) The relative earning capacities of each of them;
- (f) The sources of income of each of them; and
- (g) All other factors that permit each of them to be fully financially informed and properly advised to enter into this agreement.

Disclosure Regarding Income Taxes Clause:

The parties have attached their respective federal and state income tax returns for 2017, Exhibit “A” for Husband and Exhibit “B” for Wife. The parties represent to one another that the returns are accurate to the best of their knowledge, information, and belief, and that such tax returns are a fair representation of their respective income and income taxes paid for 2017. Both parties acknowledge that the Tax Cuts and Jobs Act (2017) will likely result in each party owing a different amount of taxes on similar income earned in 2018.

Division of Stock Options Clause:

Husband is the owner of thirty (30) stock options with ABC Corporation, granted on January 2, 2018. One-third (1/3) of the options will vest on January 2, 2019, one-third (1/3) on January 2, 2022, and one-third (1/3) on January 2, 2025.

Husband shall provide Wife, with ten (10) days prior written Notice of his intention to exercise the option. Within ten (10) days following the exercise of the option, Husband shall provide Wife with documentation regarding the net proceeds received from the exercise of the option. Wife shall receive 50% of the net proceeds.

Within ten (10) days of Husband's filing of his income tax return for the calendar year for which the option (s) were exercised, Husband shall provide Wife with a copy of the return. Taxes on the exercise shall be determined based upon Husband's effective tax rate. Within the thirty (30) days, Wife shall receive additional monies if she was underpaid. If Wife's prior receipt of the distribution resulted in an overpayment, and she owes additional taxes on her share, Wife agrees to repay said taxes due to Husband within the thirty (30) days of her receipt and acceptance of the tax return.

Division of Stock Option Clause (continued)

Should Wife disagree with the tax calculation, she shall notify Husband, in writing, within twenty (20) days of her receipt of the tax returns of her intention to have the taxes recalculated by another tax professional of Wife's selection. If Husband and Wife are unable to agree upon the tax calculation, the matter shall be submitted to the Court having jurisdiction over the divorce to make a determination of the taxes.

Valuation of Stock Options (Present Value) Clause:

In the event of divorce, if Husband owns stock options with the ABC Corporation, and he desires to retain the options, the parties agree to hire a mutually agreed upon expert to determine the value of the stock options at the time of the equitable distribution. Options owned at the time of the execution of the Premarital Agreement shall be considered separate property. Wife waives all interest in the options acquired by Husband at the time of the execution of the Premarital Agreement, regardless of the date upon which the option (s) vest(s).

Husband agrees that Wife shall receive 50% of the net value of the stock options acquired by Husband during the marriage, as determined by the mutual expert, within thirty (30) days of the Divorce Decree. Wife shall receive her share in cash or cash equivalents. Wife waives the right to compel the exercise or sale of the stock options by Husband.

Confidentiality of Information And Use of Social Media:

The parties agree that they shall treat as confidential certain personal information, inflammatory photographs and/or video, as described herein. Further, the parties acknowledge that the internet and social media are an increasingly popular method for sharing information at present, and the parties concur and feel strongly that, in the event their relationship ends in a separation and/or divorce, it is inappropriate and damaging for personal or financial information to be disseminated via social media. Such information as specified herein, shall remain confidential. Toward that end, and in the event of a separation, as defined in this Agreement, or divorce action between the parties, the parties agree as follows:

- A. Social media is defined herein as any internet platform or internet source, including, but not limited to Facebook, Twitter, Snapchat, dating sites, blogs, applications (“apps”) for use on any tablet, phone or similar technology, websites, or any other similar technology.

- B. Neither party shall share personal information pertaining to the other party on social media, including, but not limited to, address, employment information that is not already made public by the other party, income, financial, or information of a personal identifying nature (Social Security numbers, Driver’s License numbers, etc.).

Confidentiality of Information And Use of Social Media (continued)

C. The parties agree that, to the extent they mention the other party, on social media, including by description, nickname or initials, such commentary shall be positive in nature. Neither party shall make disparaging remarks against or about the other party or disseminate untrue statements.

D. Neither party shall disseminate photographs or video of the other party that portrays him or her in any sexual acts or in a state of nudity or undress, regardless of whether those photographs or video were previously provided to the disseminating party by consent.

E. The parties recognize that violation of these provisions would constitute a violation of confidentiality under this Agreement, and will cause irreparable harm to the non-defaulting party. Should either party violate these provisions, the defaulting party shall be subject to monetary sanctions and shall pay the non-defaulting party's reasonable legal fees for any services rendered by his/her attorney, as well as any other attendant expenses in any action or proceeding to compel the defaulting party's due performance hereunder; with the amount of the monetary sanctions to be determined by a Court.

F. The above provisions do not apply to any information required to be produced in court or by a government entity, or in relation to litigation pertaining to the enforcement of this Agreement, such as to a party's attorney, expert, or consultant, including, but not limited to, information required in response to formal discovery.

Drafting Considerations for Children and Social Media

Children's use of social media

Age of use

Parental monitoring

Limitations

Example: Mother and Father agree that Child shall not be permitted to establish social media accounts until Child attains the age of sixteen. At such time, Mother and Father shall decide together what type of accounts are appropriate. Mother and Father shall carefully monitor Child's computer and internet usage during his/her custodial periods to ensure that such accounts are not established prior to that time. Once Child establishes social media accounts, both Mother and Father shall have full access to Child's social media accounts, including passwords, and shall monitor Child's use of social media. Mother and Father agree that they will work together to limit Child's use of social media to ensure that it will not impact Child's academic performance or overall well-being.

Drafting Considerations for Children and Technology

Children's use of cell phones

Age of use

Parental monitoring

Limitations

Payment

Example: Mother and Father agree that Child shall not have a cell phone of his own until he attains the age of thirteen. Child will be added to Mother's family plan, and Father will reimburse Mother for one-half of the cost of Child's plan. At such time, Child will have access to telephone and text functions only and shall only be permitted to contact individuals at numbers pre-approved by Mother or Father. Mother shall utilize parental monitoring options provided by Mother's cell phone carrier to ensure that this occurs. Mother and Father shall communicate via email regarding approved contacts. Mother and Father agree that they will work together to limit Child's use of his/her cell phone to ensure that it will not impact Child's academic performance.

I. STEP-PARENT RIGHTS/CUSTODY

A. Public Policy and Legal Developments

1. Best interests of child may warrant addressing when the child is bonded with a step-parent.

2. Selected Custody Factors 23 Pa. C.S. §5328(a)(3) and (4):

(3) The parental duties performed by each party on behalf of the child.

(4) The need for stability and continuity in the child's education, family life and community life

3. Presumption for primary physical custody between a parent and non-parent in favor of a parent can be overcome by clear and convincing evidence. 23 Pa. C.S. §5327(b)
4. Standing for partial physical custody, see Act 21 of 2018 (Senate Bill 844) signed by Governor Wolf May 4, 2018, effective in 60 days (early July).
5. Legislation in response to D.P. v. G.J.P. 146 A.3d 204 (Pa. 2016) striking down grandparent rights where parents were unmarried and separated.
6. A decision is pending in C.G. v. J.H. from the Supreme Court, argued May 2018 addressing third-party custody rights and *in loco parentis* requirements.

B. Drafting Considerations for Step-Parent Partial Custodian

1. Custodian Times Specified

- a. Weekly; semi-monthly; monthly schedule?
- b. Holidays – primary or secondary?
- c. Vacations
- d. Transportation arrangements and cost
- e. Timeliness and consequences if untimely
- f. Make-up time
- g. Possible extended time
- h. Input of child (at what age?)

2. Communication

- a. Telephone/Facetime
- b. Email and texting
- c. Social media
- d. Abide by parental rules

3. Child's Activities/Development/Needs

- a. Updates on medical issues
- b. Update on school and academic support needed
- c. Opportunity to attend activities, practices, games/performances

Included in Materials

23 Pa. C.S. §§5324 to 5328

D.P. v. G.J.P. 146 A.3d 204 (Pa. 2016)

Act 21 of 2018 (Senate Bill 844) signed May 4, 2018

See also

Gradwell v. Strauss 610 A.2d 999 (Pa. Super 1992)

J.A.L. v. E.P.H. 682 A.2d 1314 (Pa. Super 1996)

T.B. v. L.R.M. 786 A.2d 913 (Pa. 2001)

Jacob v. Schultz-Jacob 923 A.2d 473 (Pa. Super 2007)

II. STEP-PARENT RESPONSIBILITIES/SUPPORT

A. Public Policy and Legal Developments

1. Who has the right to seek support?

Pa. R.C.P. 1910.3 Parties, Obligor, Obligee allows a parent to file for support; any person caring for a child regardless of whether that person had an order for custody. See also 23 Pa. C.S. §4341(b)

2. Who is obligated to pay support?

Parents are obligated to support their unemancipated children 18 years of age and younger 23 Pa. C.S. §4321(3); and may be liable for children who are 18 years of age and older 23 Pa. C.S. §4321(3)

3. Are sperm donors “parents” obligated to support?

In Jacob v. Schultz-Jacob 923 A.2d 473 (Pa. Super 2007) donor-father as the friend of lesbian parents, was involved with the child. When the mother’s separated, the support court considered the donor-father a co-obligor with both mothers. The Superior Court agreed.

The donor-father in Ferguson v. McKiernan 940 A.2d 1236 (Pa. 2007) who knew the mother signed a contract with mother which relieved the donor of any child support obligation. Mother argued this was contrary to public policy for child support, however, the contract was upheld by the Supreme Court.

4. When does a step-parent owe support?

In A.S. v. I.S. 130 A.3d 736 (Pa 2015) a step-father who pursued custodial rights, blocked mother's relocation with her sons. After the step-father achieved primary physical custody, he sought child support from mother without consideration of step-father's income in the Guideline calculation. income. The Supreme Court followed the logic of the L.S.K. v. H.A.N. 813 A.2d 872 (Pa. Super. 2002) in which a same-sex partner who sought custody arguing *in loco parentis* status, was found to have a support obligation. Responsibility to pay support will extend to a step-parent who conducts a relentless pursuit of custody rights.

5. Will support obligations extend to grandparents, aunts, uncles and adult siblings who seek custody?

The majority in A.S. v. I.S. *supra* states *in loco parentis* status alone is insufficient to obligate a parent. Yet third parties seeking custody may agree to a support obligation as well as physical custody rights to avoid the need to litigate vigorously for recognition of the third party's (including a step-parent's) willing assumption of parental duties

6. Will non-parent partial custodians be obligated to pay support?

When does a partial custody commitment by natural parent give rise to a support contribution by a step-parent or other third party?

B. Drafting Considerations for Step-Parent Support

1. Limited custody and limited support

- a. the step-parent who seeks to secure limited time may agree to pay 100% of travel expenses for an annual vacation or limited holiday time
- b. Direct payment for actual expenses
- c. Limited or no accountability to the parent

2. Step-parent with routine but modest partial custody

- a. Is relieving parent of feeding the child on a regular basis enough?
 - b. May agree to pay a fixed amount toward child's needs in order to stay in parent's good graces
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3. Step-parent who forgets the active litigation (as in A.S. v. I.S., *supra*) who is alternating weekends, many holidays and vacation.
 - a. Agrees to pay traditional child support
 - b. Take into consideration both natural parents and step-parent
 - c. The step-parent with no legal custody rights (medical, educational decisions) logically has no obligation for medical insurance, uncovered medical and education
 - d. The step-parent actively involved in activities may be obligated to contribute a “fair share”
 - e. all issues about earnings and earning capacity will apply

4. If child support is negotiated, what are the guidelines?
 - a. In A.S. v. I.S., *supra*, the Court pointed to Pa. R. C. P 1910.16-1 applying the Guidelines to a non-biological parent's equitable support obligation
 - b. See Pa. R.C.P. 1910.16-2(b)(2) addressing support where a child qualifies for Social Security derivative benefits
 - c. Since the Rule contemplates income from a third source (Social Security) not a third obligor, the approach is not comparable
 - d. With two parents and a step-parent creates three sources of income with the child support to be allocated proportionately to all three
 - e. Deviation may well be warranted

5. Will the Supreme Court issue Guidelines to address multiple-obligor support?

6. By drafting an Agreement for step-parent support, the parties minimize litigation later and address the real economic and emotional needs of the child so the step-parent custodial time, goes hand in hand with the best interests of the child, after separation of parent and step-parent.

Included in materials:

A.S. v. I. S., 130 A.3d 763 (Pa. 2015)

III. COHABITATION – ALIMONY TERMINATION

A. Public Policy and Legal Developments

1. The Divorce Code at 23 Pa. C.S. §3706 bars alimony if after divorce the petitioner “has entered into cohabitation with a person of the opposite sex who is not a member of the family of the petitioner within the degrees of consanguinity”.

See Kipp v. Kipp 158 (Pa. Super 2001) when former wife was cohabitating with another woman and the statute did not apply to a same-sex relationship.

2. Caselaw interprets “cohabitation” as mutually assuming rights and duties of a marital relationship.

In Miller v. Miller 508 A. 2550 (Pa. Super 1986) found the statute requires that the parties living together as husband and wife are “mutually assuming those rights and duties attendant upon the marital relationship”.

3. Caselaw interprets brief relationship compared to cohabitation.

Miller v. Miller *supra*, found isolated acts of intercourse do not constitute cohabitation.

4. Alimony Agreements could go beyond statutory and caselaw developments.
5. With changes in tax deductibility by payor and inclusion by payee, 2018 Agreements need to address alimony deductibility/inclusion under prior tax law at modification. (See proposed alimony clauses.)

B. Drafting Considerations – Cohabitation and Alimony Termination

1. Scrivener has the option to reference the definition in the Divorce Code and case law interpreting the cohabitation language to date.
2. Does the couple want to elaborate on “mutually assuming rights and responsibilities of a marriage relationship”?
3. Will cohabitation with a same-sex partner be a basis to forfeit alimony?

4. Now that same-sex marriage is Constitutional, will the Agreement extend the forfeiture of alimony to same-sex marriages and cohabitation when the couple “assumes rights and responsibilities of marriage”?
5. Address more closely economic independence. What if the alimony recipient shares rent and bills? What are mutual rights if a dependent party has no right to spousal support?
6. Distinguish the occasional visitor by specifying the period of time which constitutes cohabitation. When does use of two homes become insufficient to refute cohabitation?
7. Due to evolving acceptance of gender identity issues, see the chart on terminology for a transgender man or woman.

IV. HOUSEHOLD MEMBERS AND CUSTODY DISCLOSURE OF CRIMINAL CONVICTION; PENDING CHARGES; CHILD ABUSE; PROTECTIVE SERVICES

A. Public Policy and Legal Developments

1. Safety of children has always been part of custody determination of best interests of a child.

See Landis v. Landis 869 A.2d 1003 (Pa. Super 2005)

2. The 2011 amendments to the custody statute require judges and the court to address safety issues.

Resurrecting Alimony's Tax Benefits

Option 1:

If alimony becomes tax deductible pursuant to any ruling by the Internal Revenue Service or any court or as a result of any legislation or regulation, the amount of alimony paid shall be increased by a percentage equal to the average of the parties' respective effective federal income tax brackets. The alimony shall then be taxable to the payee and tax deductible by the payor. By way of example, if Husband is paying \$10,000 of alimony, and Husband pays federal income tax at an effective rate of 38% and Wife pays federal income tax at an effective rate of 25%, the alimony shall be increased by 31.5% to \$13,150. In the event that the net cost to Husband, after considering the tax deduction, exceeds \$10,000, the foregoing formula shall not apply and, instead, the alimony shall not be taxable/tax-deductible.

Resurrecting Alimony's Tax Benefits

Option 2:

If alimony becomes tax deductible pursuant to any ruling by the Internal Revenue Service or any court or as a result of any legislation or regulation, at the discretion of the payor, the alimony shall be taxable to the payor and tax-deductible by the payee, provided that the payor pays to the payee, as non-taxable alimony, an amount equal to the taxes paid by the payee on the alimony. The amount of tax for which the payor shall be responsible shall be based on the payee's effective tax rate multiplied by the taxable alimony.

Alimony With Lost Tax Benefits

What about modification?

The law provides as follows:

any divorce or separation instrument (as so defined) executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.

Alimony With Lost Tax Benefits

What about modification? Can you “piggyback” on an APL agreement?

Example: The parties entered into an agreement for Alimony pendente lite, which was executed by on October 1, 2017 and entered as an Order of Court on October 10, 2017 (“Alimony Agreement”). Pursuant to the Alimony Agreement, Husband has been paying to Wife Nine Thousand Dollars (\$9,000) of alimony pendente lite per month. The foregoing payments are hereby modified to be Eight Thousand Dollars (\$8,000) commencing with the payment due June 1, 2019 (“Monthly Payment”). Such payments shall be made directly to Wife.

Alimony With Lost Tax Benefits

Example Tax Language:

The parties agree and acknowledge that the Alimony Agreement was a “divorce or separation instrument”, as defined in Section 71 of the Internal Revenue Code, executed prior to December 31, 2018, and that this Paragraph does not set forth a new obligation, but instead is a modification of the Alimony Agreement. The parties acknowledge and agree that pursuant to Section 11051 of Public Law No. 115-97, also known as the Tax Cuts and Jobs Act of 2017, the Monthly Payments pursuant to this Paragraph 13, being a modification of the amounts paid under the Alimony Agreement, remain taxable to Wife and tax deductible by Husband. Therefore, it is the intention, understanding and agreement of the parties that the payments described in this Paragraph 13 shall constitute “alimony” as that term is defined in Section 71 of the Internal Revenue Code and that, accordingly, all such payments shall be includable in Wife’s gross income and deductible by Husband for federal income tax purposes pursuant to Sections 71 and 215 of the Internal Revenue Code.

Alimony With Lost Tax Benefits

What if it doesn't work?

If, pursuant to any ruling by the Internal Revenue Service or any court or as a result of any legislation, regulation, tax examination or audit, all or any part of the amounts paid under this Paragraph shall not be deductible by Husband for the purpose of computing his federal income tax liability, and not includable in Wife's gross income for the purpose of computing her federal income tax liability, the payments made pursuant to this Paragraph shall be readjusted so that the amounts paid to Wife shall be reduced by one-half (1/2) of the sum of: (i) the amount of federal income tax payable by Husband which is attributable to the non-deductibility of such alimony payments from his gross income; plus (ii) the amount of federal income tax saved by Wife by not having to pay income tax on such alimony payments.

Alimony With Lost Tax Benefits

(Continued)

Similarly, to the extent that the deduction for any previously made Monthly Payments is disallowed, and Husband is required to pay additional tax and Wife is refunded any taxes previously paid on the disallowed Monthly Payments that were included in her income, Wife shall pay to Husband one-half (1/2) of the sum of: (i) the amount of federal income tax payable by Husband which is attributable to the non-deductibility of such previously made Monthly Payments; plus (ii) the amount of federal income tax saved by Wife by not having to pay income tax on the disallowed Monthly Payments. The foregoing payment from Wife to Husband shall be in the form of a pro-rated reduction in the following twelve (12) months of Monthly Payments, commencing as of the date when the foregoing payment is determined. By way of example, if Husband is required to pay \$20,000 in additional tax on account of the Monthly Payments being disallowed, and Wife is refunded \$10,000 on account of the Monthly Payments being disallowed, the amount to be paid from Wife to Husband would be \$15,000. If the determination of those amounts is made on June 1, 2021, commencing with the July 1, 2021 payment, the Monthly Payments through the June 1, 2022 payment shall be reduced by \$1,250 per month.

Tax Credits/Head of Household/Dependency Exemptions

Option 2:

The parties recognize the current and potential future availability of certain tax benefits related to the care and support of the parties' children. The parties further recognize that such benefits may not be equally available to both parties based either on the custody arrangement or on the parties' respective incomes. To the extent legally permissible, including pursuant to the Internal Revenue Code, the parties shall share such tax benefits, so long as there is an economic benefit to both parties. If there is no economic benefit to both parties in a given year, then the parties shall cooperate so that the party who would receive an economic benefit may utilize both parties' tax benefits, including by completing any required tax documents. By way of example, if there is a dependency tax benefit available on account of each child, the parties shall each be entitled to claim one such dependency tax benefit each year, and shall alternate who claims the additional dependency exemption. If, however, any dependency exemption does not reduce a party's tax obligation, and it would reduce the other party's tax obligation, the party who would receive a reduced tax obligation shall be entitled to utilize the other party's exemption. If in the following year the party who did not utilize the exemption can realize a reduced tax obligation on account of the exemptions, but it would otherwise have been the other party's turn to claim the additional child's exemption, that party shall be entitled to utilize the exemption that he or she did not utilize in the prior year.

Ensuring that the Current Law Applies

The parties recognize that the laws in the Commonwealth of Pennsylvania may be modified or changed subsequent to the date of execution of this Agreement, but understand that regardless of where they may reside or be domiciled in the future and regardless of the situs of any of the parties' real and/or personal property, this Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, which are in effect as of the date of execution of this Agreement. Each party submits to the personal jurisdiction of the Commonwealth of Pennsylvania for any action or dispute arising under this Agreement.

To the extent that the laws of the Commonwealth of Pennsylvania, federal law or the Internal Revenue Code are amended or changed such that a party may not realize the economic benefit of the terms of this Agreement (including that certain transfers or payment may be subject to different treatment other than as set forth in this Agreement, or that certain transfers may not be permissible), the parties shall make adjustments to the payments and transfers so that the parties are in comparable economic positions following the implementation of the terms of this Agreement as was anticipated).

Non-Modifiable Child Support

The Law – A parent cannot waive or bargain away his or her right to receive child support, as child support is for the benefit of the child. Kesler v. Weniger, 744 A.2d 794, 2000 PA Super 2, (Pa.Super.,2000).

Non-Modifiable Child Support

Can you create a disincentive?

Non-Modifiable Child Support

Providing for alimony in the event of a change in child support:

Taking into account the level of distribution to each party, the parties have mutually agreed that neither party shall have an obligation to pay child support for the Children until [date], irrespective of any custodial arrangements entered into between the parties or subsequently ordered by the Court. Both parties have been advised of the potential unenforceability of this provision. Accordingly, in the event either party initiates an action to compel the other to pay child support prior to [date] the party who filed for child support shall satisfy all of the other party's reasonable attorney's fees and expenses regardless of whether a party shall be obligated to pay monthly to the other party, on a dollar-for-dollar basis, as non-taxable alimony, the same amount that is received by him or her monthly as child support.

Non-Modifiable Child Support

Agreement as to Incomes:

Taking into account the level of equitable distribution to each party, the parties have mutually agreed that neither party shall have an obligation to pay child support for the Child, other than as set forth in this Agreement, until after [date], so long as the parties continue to have approximately equal physical custody during such period. Both parties have been advised that this provision may be unenforceable in whole or in part in a Court of law.

Accordingly, in the event either party initiates an action to compel the other to pay child support: (a) neither party shall challenge or contest the other party's argument that, for purposes of calculating support, the income of the party seeking support is equal to the income of the party from whom support is being sought, and there shall be an irrebuttable presumption that, for child support purposes, each party earns an income equal to or greater than the other party, at all times through [date]; (b) the party who filed for child support shall satisfy all of the other party's reasonable attorney's fees and expenses regardless of whether that party is ultimately obligated to pay monthly child support; and (c) to the extent that a party is obligated to pay child support, the party receiving child support shall pay, monthly, to the other party, on a dollar-for-dollar basis, as non-taxable alimony, the same amount that is received by him or her monthly as child support, which amounts will be fully tax free to the party receiving the dollar-for-dollar payments.

Non-Modifiable Child Support

Revisit Equitable Distribution. Taking into account the level of distribution to each party, the parties have mutually agreed that neither party shall have an obligation to pay child support for the Children until [date], irrespective of any custodial arrangements entered into between the parties or subsequently ordered by the Court. Both parties have been advised of the potential unenforceability of this provision. Accordingly, in the event either party initiates an action to compel the other to pay child support prior to [date] at the discretion of the other party, the equitable distribution award shall be re-visited in light of the child support payment.