

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



A.T. Debnam is a Board Certified Family Law Specialist by the *North Carolina State Bar Board of Legal Specialization* and a certified family financial mediator through the *North Carolina Dispute Resolution Commission*. She concentrates her practice in the area of domestic law and represents clients in all aspects of family law, including divorce, custody, equitable distribution, child support, and alimony.

What Happens if My Ex-Spouse Falls Behind on Alimony Payments?

March 15, 2023 | by

Alimony, also known as spousal support, is a court-ordered payment that one spouse makes to the other after a divorce or separation. In North Carolina, alimony may be awarded to a dependent spouse (i.e., a spouse who is financially reliant on the other) in a divorce or separation case. It may be awarded as a lump sum payment, periodic payments, income withholding, or transfer of title or possession of personal property or any interest therein or a security interest in or possession of real property. Several factors determine the amount and duration of alimony payments, including each spouse's income and earning potential, the length of the marriage, and the standard of living established during the marriage. Alimony in North Carolina may be temporary or permanent. It can be modified or terminated under certain circumstances, such as if the receiving spouse remarries or cohabitates with someone with whom they are in an intimate relationship. Note that cohabitation requires the two individuals to dwell together continuously and habitually, which applies to heterosexual and homosexual relationships.

By statute, alimony terminates in North Carolina upon the death of either party. Alimony can be ordered by the Court (i.e., court order) or in a private contract between the parties (i.e., separation agreement).

WHAT HAPPENS IF MY EX-SPOUSE FALLS BEHIND ON ALIMONY PAYMENTS AND I HAVE A COURT ORDER?

If you have a court order for alimony and your spouse is not making alimony payments and falling behind, you have the right to file a motion in the cause to enforce the order. N.C. Gen. Stat. § 50-16.7(j) provides that an alimony order is enforceable by civil contempt and that its disobedience is punished by criminal contempt.

Consequences for the non-paying spouse can be severe and may include wage garnishment, property liens, and even jail time in extreme cases.

Contempt is probably the most frequently used enforcement tool. If your ex-spouse is held in contempt, depending on whether it is civil or criminal, penalties can include a fine, censure, imprisonment, and in some cases, an award of attorney fees. However,

N.C. Gen. Stat. § 50-16.7(d) – (k) lists specific remedies other than contempt for enforcement of an alimony order. Please note that some of these remedies are prejudgment, meaning they cannot be used after entering an alimony order.

Remedies that apply at the time of the entry of an alimony order or after an alimony order is entered are as follows:

1. Require the supporting spouse to execute a mortgage, deed of trust, or security interest concerning real or personal property owned by the supporting spouse. This is to secure **future** payment of alimony. If the supporting spouse fails to comply, the Court may enter an order transferring the title or by ordering another person to execute the documents required to transfer the title.
2. Order supporting spouse to secure the payment of alimony by requiring an assignment of wages, salary, or other income.
3. Order the transfer of property to satisfy an arrearage.
4. Remedies of attachment and garnishment as provided in Article 35 of Chapter 1 and Article 9 of Chapter 110 of the General Statutes. The dependent spouse is deemed a creditor of the supporting spouse.
5. Receivers may be appointed as provided in Article 38 of Chapter 1 of the General Statutes to take possession of a supporting spouse's property or income when necessary to enforce a court-ordered support obligation.
6. Dependent spouse shall be a creditor within the meaning of Article 3A of Chapter 39 of the General Statutes pertaining to voidable transactions;
7. Past due periodic payments may be reduced to a judgment which shall then be a lien like other judgments; and
8. Remedies of execution (N.C. Gen. Stat. § 1-302 *et seq.*), execution sales (N.C. Gen. Stat. § 1-339.41 *et seq.*), and supplemental proceedings (N.C. Gen. Stat. § 1-352 *et seq.*) are available to enforce judgments for alimony.

WHAT IF MY EX-SPOUSE AND I RESOLVED ALIMONY IN A PRIVATE CONTRACT, AND MY EX-SPOUSE FALLS BEHIND ON ALIMONY PAYMENTS?

Suppose alimony is established in a private contract (not incorporated into the court order), and the supporting spouse stops paying alimony. In that case, the dependent spouse can bring an action for breach of contract and specific performance. A dependent spouse may sue for breach of contract and seek monetary damages. A party may also seek specific performance of the contract when the legal remedy is inadequate. Specific performance means the court orders one party to do what they originally contracted to do. However, the dependent spouse would have to show that the supporting spouse could perform under the contract (i.e., had the ability to pay alimony but chose not to).

In summary, if an ex-spouse falls behind on alimony payments, the consequences for the non-paying spouse can be severe and may include wage garnishment, property liens, and even jail time in extreme cases. Therefore, both parties need to understand their legal rights and responsibilities regarding alimony payments to avoid future financial and legal problems.

CONTACT US

919.250.2000

mail@smithdebnamlaw.com

RALEIGH OFFICE

The Landmark Center

4601 Six Forks Road, Suite 400

Raleigh, NC 27609

Phone: 919.250.2000

Fax: 919.250.2100

CHARLESTON OFFICE

171 Church Street

Suite 120C

Charleston, SC 29401

Phone: 843.714.2530

Fax: 843.714.2541