

MAINTENANCE (ALIMONY) IN NEW YORK



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December 2009

What is maintenance?

In common language it is usually called alimony. The Courts and your legal papers will call it maintenance.

Maintenance is defined as the payment of money from one spouse (or a former spouse) to the other spouse. The purpose of maintenance is to ultimately allow you to become financially self-sufficient. You can receive maintenance at the same time as receiving child support. However, whatever amounts you receive in maintenance can (and probably will) reduce how much child support you receive.

Maintenance may be awarded to either spouse without regard to gender. Therefore, either spouse may request maintenance as part of the divorce. However, if you want to be eligible for maintenance you must request it in your complaint or Answer.

In deciding whether you are eligible for maintenance the Court uses the following factors:

1. The income and property of the respective spouses including marital property distributed pursuant to equitable distribution.
2. The duration of marriage.
3. The age and health of the respective spouses.
4. The present and future earning capacities of both spouses.
5. The ability of the person seeking maintenance to become self-supporting.
6. Whether there is a reduced or lost earning capacity of the person seeking maintenance

which resulted from forgoing or delaying training or employment during the marriage.

7. The presence of children of the marriage in the respective homes of spouses.
8. The tax consequences to the parties.
9. Other contributions and services of the spouse seeking maintenance
10. Whether either spouse has wasted the marital assets. (also known as wasteful dissipation of marital assets)
11. Transfers made by a spouse in contemplation of the divorce action at below market value.
12. Any other factor the Court determines to be relevant.

In general terms, the most important factors are: the length of the marriage and the income of the spouses. Each marriage and divorce is different. Therefore, it is difficult to predict if you will be eligible for maintenance. However, if your marriage was 5 years or less, it is very unlikely that you will receive maintenance. In contrast, if your marriage lasted 20 years or more and there is a financial reason to award maintenance, then you may have a good chance of receiving maintenance. If you fall between these two extremes, then the closer your marriage is to 20 years, the better your chances of receiving maintenance.

In addition, once the divorce action is started (commenced), your attorney can file a motion requesting a temporary award of maintenance. This is called a "pendente lite" request. Your attorney will need to submit a motion requesting temporary maintenance (this is called a pendente lite motion). The Courts will review the motion papers submitted in support of the request for temporary maintenance. In some instances the Court will require a hearing to determine if temporary maintenance is justified, however a hearing is not required.

If the Court awards temporary maintenance, this does not necessarily mean that you will be awarded maintenance after the divorce is final. A final award of maintenance can only

determined at the conclusion of a divorce and must be based on the factors listed above.

Assuming you are awarded maintenance, there will be two parts to the award: (i) how long you will receive maintenance; and (ii) the monetary amount of the award. It is possible to receive maintenance for the lifetime of the paying spouse.

Maintenance payments may end if there is proof that the receiving spouse is habitually living with another person and holding themselves out as husband and wife. If instead of a court order, the parties have agreed to pay maintenance then the agreement will specify when and upon what circumstances maintenance will automatically terminate.

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Regardless of what the court order specifies, maintenance will automatically terminate upon the following events: (i) the receiving spouse is remarried and (ii) the paying spouse dies.