

August 2022 "Ok I have to pay maintenance.... But how much and for how long?"

Last month's blog addressed the factors for a determination as to whether maintenance would be awarded or not. If the court awards maintenance, in most cases the court will follow the guidelines for amount and duration.

The amount of maintenance is formulaic based on considerations of the incomes of both parties. Income includes money from **ALL** sources including employment income, interest income, disability income etc. All income from all sources is the language of the statute. Further, if say the recipient spouse is unemployed or underemployed, we typically see the court impute income of at least full time minimum wage income, if not more, depending on age, health, education, work history etc. in determining the recipient's spouse's income for maintenance calculation purposes.

With that as the wind up, here is the pitch. How is maintenance amount calculated? For couples earning a combined income of \$500,000 or less, the pertinent section of 750 ILCS 5/504 sets it at 1/3 of payor's income less ¼ of payee's income as follows:

(A) The amount of maintenance under this paragraph (1) shall be calculated by taking 33 1/3% of the payor's net annual income minus 25% of the payee's net annual income. The amount calculated as maintenance, however, when added to the net income of the payee, shall not result in the payee receiving an amount that is in excess of 40% of the combined net income of the parties.

To make the math simple, if Sam Sunshine nets \$1,000 per week and Susie Sunshine nets \$200 per week, the maintenance calculation is $\$333 - \$25 = \$308$ per week. Be careful however in calculations as there is a cap. The cap is 40% of the total net income of the parties which in this case is \$480 per week. Using this example with Sam at \$1,000 net per week and Susie at \$200 per week, we are not near the cap. But if the payee's income, plus her maintenance award under the formula, combined exceeds 40% of the total income of the parties, we bump up against the cap. Confused? It is confusing. But that's why the attorneys and the judges for the most part have one of the software subscriptions that makes these calculations. The software includes other components such as dependent exemptions, child tax credits, cash income as opposed to W-2 reported and taxed income and the like. By adding the correct inputs, the software program provides the proper net income calculations and computes formulaic maintenance. Free maintenance calculators are also on the Internet and these work well too at least for a ballpark figure as to calculations. Based on needs or other factors, such as percentage division of marital assets, or whether a party perhaps has sizeable non-marital assets, the court can deviate from the guidelines formula. But what we see in most cases is application of the guidelines.

Keep in mind, the formula is for couples earning combined \$500,000 or less as stated in the statute. For couple's earning more than \$500,000 combined, don't worry, you both have plenty of money. In those rare cases, the court will use its discretion in a maintenance award and/or apply the guidelines anyway.

"Alright" says Sam Sunshine says begrudgingly while seated in his attorney's office, "I guess have to pay her \$480 per week. Fine! But for how long? A year or two?"

Well, that depends on the length of the marriage, which for maintenance calculation purposes is calculated as of the date of marriage up to the date of filing. This discourages the other side from

dragging on the case solely to extend the maintenance duration. The length of maintenance is calculated as follows.

(B) The duration of an award under this paragraph (1) shall be calculated by multiplying the length of the marriage at the time the action was commenced by whichever of the following factors applies: less than 5 years (.20); 5 years or more but less than 6 years (.24); 6 years or more but less than 7 years (.28); 7 years or more but less than 8 years (.32); 8 years or more but less than 9 years (.36); 9 years or more but less than 10 years (.40); 10 years or more but less than 11 years (.44); 11 years or more but less than 12 years (.48); 12 years or more but less than 13 years (.52); 13 years or more but less than 14 years (.56); 14 years or more but less than 15 years (.60); 15 years or more but less than 16 years (.64); 16 years or more but less than 17 years (.68); 17 years or more but less than 18 years (.72); 18 years or more but less than 19 years (.76); 19 years or more but less than 20 years (.80). For a marriage of 20 or more years, the court, in its discretion, shall order maintenance for a period equal to the length of the marriage or for an indefinite term.

The court can order temporary maintenance during the case. Designed to prevent dragging out the case to collect maintenance payments longer than the formula duration dates, the statute further states:

(1.5) In the discretion of the court, any term of temporary maintenance paid by court order under Section 501 may be a corresponding credit to the duration of maintenance set forth in subparagraph (b-1)(1)(B).

When Sam is informed on his marriage to Susie that lasted 15 years from the date of marriage to the date of filing for divorce that he has to pay 9 years and 6 months of maintenance, (and after he regains consciousness after passing out and his attorney gives him a glass of water) the attorney tries to give some good (ish) news. That news is 1) maintenance is always (unless otherwise agreed) modifiable. Changes in circumstances such as change of income, loss of job, layoffs, strikes, and other factors can be the basis for modification and/or termination. 2) Also unless otherwise agreed maintenance terminates on death of either spouse, Susie's remarriage or Susie living with her new hunk of a boyfriend Biff Muscles. That is, maintenance terminates if Susie and Biff "cohabit on a resident continuing conjugal basis" as per 750 ILCS 5/510.

(c) Unless otherwise agreed by the parties in a written agreement set forth in the judgment or otherwise approved by the court, the obligation to pay future maintenance is terminated upon the death of either party, or the remarriage of the party receiving maintenance, or if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis.

Hmmmm, "cohabitation on a resident continuing conjugal basis" sounds kind of convoluted, no? Yes it is and it is hard to prove but not impossible. This will be addressed in the next blog. Stay tuned!

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