

Family Law Alert

July 2007, Revised April 2008

Spousal Maintenance

What is Spousal Maintenance?

Spousal Maintenance (support) is money paid by one spouse to the other after separation and is only paid if the party can show that they are unable to support themselves adequately and the other party is in a financial position to support the party.

Who can receive Spousal maintenance?

Spousal maintenance is only available to parties who have been married. In Queensland, it does not apply to those in a de facto relationship.

A party to a marriage is liable to maintain the other party, if they are reasonably able to do so, if, and only if, that other party is unable to support himself or herself adequately where:

- by reason of having the care and control of a child of the marriage under 18 years;
- by reason of age or physical or mental incapacity for appropriate gainful employment;
- for any other adequate reason.

If you remarry you will not be entitled to spousal maintenance and if you start a de facto relationship, the court will take into account your financial relationship between you and your de facto when considering whether you can support yourself adequately.

When must I apply for spousal maintenance?

You must make an application for spousal maintenance within 12 months of your divorce being made final otherwise you will need to seek leave from the court to make the application.

What power does the court have?

The court may make an order which it considers proper for the provision of maintenance.

What will the court consider?

When making an order the court will take into account the following matters:

- age and state of health of you and the other party;
- income, property, and financial resources of each party and each party's physical and mental capacity to work;
- whether there are children under the age of 18 years and who has the care of them;
- each party's commitments that are necessary to support himself or herself and a child or another person that the party has a duty to support;
- whether either party has a responsibility to support any other person;
- whether either party is eligible for a pension, allowance or benefit;
- Is there any superannuation fund or scheme and if so, was this fund or scheme established or operated within or outside Australia and the rate of any pension, allowance or benefit paid to either party;
- standard of living that you and the other party were used to;

- whether the payment of spousal maintenance would enable you to undertake a course of education or training or establish a business or obtain an adequate income;
- whether you have contributed to the income, earning capacity, property and financial resources of the other party;
- duration of the marriage and the affect of the marriage on your earning capacity;
- if either party is cohabiting with another person, the financial circumstances relating to the cohabitation;
- terms of any order made or proposed to be made under section 79 relating to property of the parties;
- any child support under the Child Support (Assessment) Act 1989 that the party has provided, is to provide or might be liable to provide in the future for a child of the marriage;
- any other fact or circumstance which should be taken into account
- terms of any financial agreement that is binding on the parties

When will I be paid the spousal maintenance?

Periodic maintenance payments can be made and the spousal maintenance can be collected by the Child Support Agency.

If a property settlement is reached, then a lump sum spousal maintenance can form part of the property settlement rather than periodic maintenance payments.

Where do I apply?

You can make an application for spousal maintenance in the Federal Magistrates Court or the Family Court of Australia.

If you wish to discuss spousal maintenance or require further information please do not hesitate to call us on (07) 3223 6424.