

WHAT IS SPOUSAL MAINTENANCE AND ARE YOU ENTITLED TO IT?

When relationships breakdown, it is often the case that one of the parties (usually the female), cannot financially support themselves. In certain cases, this may result in the party in need being entitled to spousal maintenance.

What is Spousal Maintenance?

Spousal maintenance is a payment made by one party to the other, to help the party in need meet payment of their everyday living expenses.

Spousal maintenance can be paid periodically (for example every week), or by way of lump sum payment (this is less common).

Payment of spousal maintenance is different to, and in addition to any legislative requirement to pay child support for minor children of the relationship.

Who is Entitled to Spousal Maintenance?

To be entitled to spousal maintenance, you need to have either been married, or in a defacto relationship which broke down after 1 March 2009.

You also need to be able to show that:

- (a) you have a need for spousal maintenance; and that
- (b) the other party has the capacity to pay.

If you cannot satisfy both of the above tests, you will not be entitled to spousal maintenance.

With regards to (a), that is calculated by adding up your reasonable weekly expenses, and comparing those to your weekly income. Such expenses include but are not limited to mortgage/rental payments, groceries, utilities, petrol, car maintenance, pharmaceuticals and other everyday expenses. Once your expenses have been calculated, you then need to deduct those from your weekly income (if you are working). If you are not working, you generally will meet the legislative requirements to prove (a). If you are working, your weekly expenses need to be deducted from your income. If your expenses exceed your income, then you will almost meet the legislative requirements to prove (a), and the excess amount is what you would seek by way of spousal maintenance payment. For example, if your weekly expenses amounted to \$800.00, and your net income was \$500.00/week, you would seek a weekly spousal maintenance payment of \$300.00/week.

With regards to (b), that is calculated in much the same way as (a). The proposed payer needs to calculate their reasonable weekly expenses and deduct those from his/her weekly income. If after the expenses are deducted, the proposed payer has "extra" money left over in income, the relevant amount of those funds would be paid to you by way of spousal maintenance (it may be all of what you are seeking by way of weekly payment, or some of it,

depending on how much “extra” is left over). Of course, if the proposed payer does not have any “extra” money left over, then you will not have proven that he/she has the capacity to pay spousal maintenance and your claim will fail.

It should also be noted that case law states the party who is in need of spousal maintenance, should not have to deplete their capital reserves to financially support themselves. This means that if the party in need has for example \$50,000.00 in a savings account, but no source of income, he/she should not have to “live off” the \$50,000.00 in a situation where the other party has the capacity to pay spousal maintenance.

How do you “Get” Spousal Maintenance and For How Long?

Unlike child support which is assessed by the Child Support Agency and pursued by them, there is no such organisation to calculate and collect spousal maintenance.

Basically, if you are entitled to spousal maintenance, the only way to receive it is for the other party to agree to pay it, or by you filing a Court application and seeking a spousal maintenance order from a Judge. If you are forced to litigate the matter, the Judge will undertake an examination of both parties’ expenses/income and after both parties have been cross-examined in the witness box, will make a decision as to how much spousal maintenance (if any) should be paid. Commencing litigation should be undertaken cautiously as it is possible for the Judge to make a Costs Order against the “losing” party in certain instances.

Usually, spousal maintenance is only paid until property settlement matters are finalised and parties have received their final entitlements.

In some instances, spousal maintenance is payable for a period of time after both parties have received their final property settlement entitlements, but such cases are in the minority.

Entitlements to spousal maintenance, just like property settlement, depends on the particular facts of each case. Be sure that you obtain specialised family law advice as to what your entitlements may be.