



# **DIVORCE Q & A**

**4<sup>th</sup> Edition - Insert**

**A brief overview of the 2016 changes with regard to support/maintenance/alimony.**

Written by:

Steven Jon Levine, Esq.

2016

## NEW RULES – TEMPORARY AND POST-DIVORCE MAINTENANCE

In 2015, the New York Legislature enacted new guidelines to calculate temporary and post-divorce maintenance. If you are a candidate for maintenance (spousal support), these new rules may strongly impact your financial future.

Temporary and post-divorce maintenance which is determined by the court is calculated in accordance with an income formula.

Where the income of the spouse (or former spouse) paying maintenance is less than or equal to \$175,000, and where that person is also paying child support, the amount of temporary or post-divorce maintenance is determined by using the lower of the following two calculations:

- (1) 20% of payor's income up to \$175,000 minus 25% of the payee's income.
- (2) The payor's income up to \$175,000 plus the payee's income multiplied by 40% minus the payee's income.
- (3) The lower of the two calculations is the guideline amount of maintenance.

Where, however, no child support is being paid by the maintenance payor, the amount of temporary or permanent maintenance is determined by using the lower of the following two calculations:

- (1) 30% of the payor's income up to \$175,000 minus 20% of the payee's income.
- (2) The payor's income up to \$175,000 plus the payee's income multiplied by 40% minus the payee's income.

- (3) The lower of the two calculations is the guideline amount of maintenance.

The above formulas are applied to the payor's income up to an income cap of \$175,000. However, the court has the discretion to award temporary and post-divorce maintenance when the maintenance payor's income exceeds \$175,000. If the court finds that utilizing the income cap is unjust or inappropriate, additional temporary maintenance may be awarded based upon consideration of the following factors:

- A) The age and health of the parties.
- B) The present or future earning capacity of the parties, including a history of limited participation in the workforce.
- C) The need of one party to incur education or training expenses.
- D) The termination of a child support award during the pendency of the temporary maintenance award when the calculation of temporary maintenance was based upon child support being awarded and which resulted in a maintenance award lower than it would have been had child support not been awarded.
- E) The wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration.
- F) The existence and duration of a pre-marital joint household or a pre-divorce separate household.
- G) Acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine A of the Social Services Law.
- H) The availability and cost of medical insurance for the parties.
- I) The care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity.
- J) The tax consequences to each party.
- K) The standard of living of the parties established during the marriage;
- L) The reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage, and
- M) Any other factor which the court shall expressly find to be just and proper.

The court may also award additional post-divorce maintenance based upon

income in excess of \$175,000, if the court finds that utilizing the income cap is unjust or inappropriate. Such additional maintenance is based upon consideration of the above factors, plus two additional factors:

- (a) The equitable distribution of marital property and the income or imputed income on the assets so distributed.
- (b) The contributions and services of the payee as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party.

Where the guideline amount of post-divorce maintenance would reduce the payor's income below the "self-support reserve" for a single person (\$15,890 for 2015), the court will calculate the amount of post-divorce maintenance by computing the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there is a rebuttable presumption that no post-divorce maintenance will be awarded.

The legislation also provides a suggested schedule with respect to determining the duration of post-divorce maintenance. This schedule utilizes the length of the marriage for which maintenance will be payable, to determine the duration of maintenance. For marriages of zero up to and including 15 years, the suggested duration is 15% to 30% of the length of the marriage; for marriages of more than 15 to 20 years - 30% to 40%, and for marriages of more than 20 years - 35% to 50%. When determining the duration of post-divorce maintenance, the court must take into consideration the factors listed above, as well as any anticipated retirement assets, benefits, and the retirement eligibility age of both parties, if these facts are ascertainable at the time of the court's Decision.

You should discuss the new maintenance legislation with your lawyer, as well

as the right to “opt-out” of the maintenance formulas in a properly executed and acknowledged written Agreement.