



THE BASICS
Getting Spousal Support
in New York State

In this booklet, we call the person who receives support the wife or ex-wife. And we call the person who pays support the husband or ex-husband. This is the way it usually happens because more often men earn more money than women.

Spouse means husband or wife.

Financial support paid by spouses or ex-spouses to one another is called **spousal support** (in Family Court) or **maintenance** (in Supreme Court as part of a divorce).

WHAT IS SPOUSAL SUPPORT?

Spousal support is money a legally married husband pays to his wife while they are still married. So long as the husband and wife are married, there should be no time limit on spousal support.

WHAT IS MAINTENANCE?

Maintenance is money an ex-husband pays to his ex-wife after they get divorced. Some people may call this alimony or spousal maintenance. The amount and duration of the maintenance is defined in the judgment of divorce. There is usually a time limit for the payment of maintenance.

WHEN CAN I GET SPOUSAL SUPPORT OR MAINTENANCE?

Men and women who are legally married to each other are required to support each other, when necessary. This means a wife or ex-wife can receive financial support from her husband or ex-husband. And a husband or ex-husband can receive financial support from his wife or ex-wife.

You may be able to get spousal support or maintenance, even if you are working, if you really need it and your husband or ex-husband can afford it.

If you receive public assistance in the form of cash, you give up your right to receive spousal support or maintenance directly from your husband or ex-husband to the Human Resources Administration (HRA) in New York City. The Department of Social Services (DSS) used to be the agency that collected spousal support and maintenance, so you may hear people still refer to DSS. And in the rest of the state, the agency that collects spousal support and maintenance is the Office of Temporary and Disability Assistance (OTDA).

So if your husband or ex-husband has to pay any spousal support or maintenance while you are receiving public assistance in the form of cash, he will have to pay it to HRA or OTDA.

You can get spousal support while you and your husband are in the midst of a divorce case (this will be called “temporary maintenance” during the divorce case). You can get spousal support even if you are still living with your husband.

WHICH COURT CAN ORDER MY HUSBAND TO PAY SPOUSAL SUPPORT OR MAINTENANCE AND WHO DECIDES?

Both Family Court and Supreme Court can order your husband to support you and can modify and enforce an order of maintenance or spousal support. However, only the Supreme Court can decide maintenance in a divorce case.

In Family Court, a Support Magistrate will, in most cases, decide whether your husband has to pay spousal support. A Support Magistrate is not a Judge, but Support Magistrates can legally decide child and spousal support cases.

In the Supreme Court, your divorce case will be decided by a Judge. That same Judge will decide whether your husband must pay temporary maintenance while the divorce case is in the court (“pending”) and/or maintenance after your divorce is final.

A pending case is one that currently is going on and is not finished.

WHEN CAN I GO TO FAMILY COURT TO ASK FOR SPOUSAL SUPPORT?

You can go to Family Court when there is no divorce case pending in Supreme Court between your husband and you.

HOW DOES THE SUPPORT MAGISTRATE DECIDE HOW MUCH SPOUSAL SUPPORT MUST BE PAID?

The Support Magistrate looks at your and your husband's current finances.

If you are the one asking for spousal support, the Support Magistrate looks at what you reasonably need and whether you can pay for what you need.

The Support Magistrate next looks at whether your husband has enough money, or is able to earn enough money, to pay a fair and reasonable amount of spousal support.

In deciding the amount of spousal support your husband must pay, the Support Magistrate may look at the cost of any necessary expenses, which can include:

- Housing
- Food
- Clothing
- Care or medical attention
- Education expenses
- Any other proper and reasonable expenses

If your husband has health insurance through his job, his union, or any other organization, he must cover you under the policy, even if the Support Magistrate does not order him to pay you any spousal support.

The Support Magistrate can order your husband to take out life insurance or accident insurance payable to you.

FOR HOW LONG CAN I GET SPOUSAL SUPPORT?

Spouses must support each other for as long as they are legally married and as long as both parties are alive.

As long as you and your husband are married, a Support Magistrate cannot limit the length of time you can receive spousal support.

Sometimes a Family Court order will not say how long spousal support will continue.

However, a Support Magistrate can change the amount of spousal support your husband must pay you. This often happens. It can happen when your finances or your husband's finances change, like when you get or lose a job.

If you were never legally married, the Support Magistrate cannot order the man you call your husband to pay spousal support to you.

Sometimes people think if they just live together and act like they are married, called common law marriage, they are legally married. But common law marriage is NOT a legal marriage in New York.

Once you get divorced, spousal support ends. This does not mean that you cannot get future financial support from your ex-husband. But anything he pays after the divorce will be called maintenance. If your marriage gets annulled, spousal support will end.

Note: If you get an order of spousal support in Family Court and then start a divorce case in Supreme Court, that spousal support order will continue to be in effect during your divorce case in Supreme Court. Once the final judgment of divorce is signed by the Supreme Court Judge, then the Family Court order of spousal support is automatically terminated unless the judgment of divorce specifically states that it shall

continue; in that case, it becomes part of the divorce and is considered maintenance.

If either you or your husband dies, spousal support ends.

HOW DO I START A SPOUSAL SUPPORT CASE IN FAMILY COURT?

There is a Family Court in each county. You can start a support case in the county where you live or in the county where your husband lives. You start your case by filing a support petition. It does not cost any money to start a case in Family Court.

A spousal support petition is a form that tells both your husband (the respondent) and Support Magistrate what you (the petitioner) want.

Family Court has special clerks to help people fill out the support petition and file the case. Although it is helpful to have a lawyer, you do not need a lawyer to file a case in Family Court. This Court is set up to help people who do not have lawyers.

If you have children and need child support from your husband, you can file for child support and spousal support in the same petition. See *The Basics Series* booklet on child support for more information.

The clerk will give you two copies of the support petition, a summons (a notice that tells your husband when and where he must show up in Family Court) and a financial disclosure affidavit form.

A financial disclosure affidavit is used in the Family Court and it asks for detailed information about a person's income and expenses. (In Supreme Court, the form is called a Net Worth Statement.)

One set of these papers must be given to (served upon) your husband. Although only the summons and support petition must be served upon your husband, it is a good idea to give him the financial disclosure affidavit at the same time, so he can start filling it out as soon as possible.

WHO SHOULD SERVE MY HUSBAND WITH THE COURT PAPERS?

The person who delivers (serves) the summons and support petition must be someone who is at least 18 years old and who is not involved in the support case. This person will have to fill out an affidavit of service and sign it in front of a notary public.

An affidavit of service is a sworn statement of the person who delivered the papers that your husband got the court papers.

The court clerk will give you this form when you file the support petition, and you will need to give it to the person who serves your husband.

Sometimes, if you have filed for both child support and spousal support in the same petition, the Support Collections Unit (SCU) in Family Court will serve your husband (the child's father) with the court papers, so that you do not have to do it.

IMPORTANT: You cannot serve the papers on your husband yourself. Your husband should get the papers at least 8 days before the next court date (the return date). If he does not get served at least 8 days before the court date, or even if he does, and he asks the Support Magistrate for more time, he will get more time. Then you and he will have to come back to court at a later date.

There are several ways to serve, but the first way is the best way:

1. By personal service (having someone hand the papers personally to your husband, the respondent).
2. By handing the papers to another person who is old enough and responsible (a person of suitable age and discretion). This can be at

- your husband's place of work or home. If he is served this way, the server must also mail a second copy of the summons and petition to your husband's last known home address. The server also must identify (by name or physical description) the person who was given the summons and petition. The server must write in the date, time and place that person was given the papers on the affidavit of service.
3. If, after 2 or 3 reasonable efforts, service cannot be made, you can ask the Support Magistrate to order another kind of service that has the best chance of getting actual notice of the case to your husband.
 4. By sending the papers by certified mail, return receipt requested, to your husband's last known address. People do not often use this method because this kind of service does not usually work. The respondent may not be home to sign for the mail, may not go to the post office to sign for the mail, or may be at home when the mail is delivered but refuse to sign for it.

WHAT HAPPENS WHEN MY HUSBAND AND I COME TO COURT ON THE RETURN DATE?

You and your husband will appear in Family Court in front of a Support Magistrate. If you and your husband cannot agree on how much support he will pay, the Support Magistrate will schedule your case for an evidentiary hearing at a future time.

Before the hearing, you and your husband must give each other your financial disclosure affidavits. These affidavits have to be filled out correctly and honestly, and signed, under oath, in front of a notary public. It is important for the Support Magistrate to have a true picture of your and your husband's financial situations. If the Support Magistrate thinks either you or your husband has lied on the financial disclosure affidavit, the Support Magistrate can hold it against you or him when deciding what amount of support he must pay.

At the hearing, the Support Magistrate will have you and your husband, and your witnesses (if any), testify under oath about your financial situations. The Support Magistrate will look at any documents (documentary evidence)

you or your husband provide. This can be bills, canceled checks, receipts, W-2's and other papers which back-up the information you and your husband have put on your financial disclosure affidavits.

After the hearing, the Support Magistrate will give a final order of spousal support if the Support Magistrate thinks your husband should pay.

GETTING MAINTENANCE AS PART OF A DIVORCE IN SUPREME COURT

The Supreme Court decides whether your husband should pay maintenance when you are seeking a divorce. In a Supreme Court divorce case, when a spouse needs support while the case is pending (going on) and while you are still married, it is called “temporary maintenance.”

When you get divorced from your husband, you will get a written divorce judgment (an order) from the Supreme Court. In your divorce case, you can ask the Judge to order your husband to pay a specific amount of final maintenance to you for a specific period of time, or for an unlimited period of time – such as until your death or remarriage – depending on your circumstances. If your request is granted, the judgment will say how much maintenance your ex-husband has to pay you. The judgment also says how long he has to pay this amount to you. If your ex-husband has made a request, the judgment may also say how much maintenance you have to pay him, if any.

TEMPORARY MAINTENANCE:

HOW DOES THE JUDGE DECIDE HOW MUCH TEMPORARY MAINTENANCE MUST BE PAID?

- The Judge applies a formula based on your and your husband’s income (so long as your husband’s income is less than \$524,000 per year). Temporary maintenance is set at whichever amount is less, either:

- thirty percent (30%) of your husband's income minus twenty percent (20%) of your income, OR
- forty percent (40%) of your husband's income and your income combined minus twenty percent (20%) of your income.
- If, after applying that formula, the Judge believes the amount of temporary maintenance is unfair, the Judge will look at a number of factors to either increase or decrease the amount, for example:
 - whether you or your husband is caring for children and this makes obtaining a good job difficult;
 - whether you or your husband needs to pay for school or training before becoming financially stable;
 - whether you or your husband has been unable to find a good job because you have been out of work for a long time;
 - whether you or your husband has to pay for major expenses for your children, such as schooling, day care or medical treatment and;
 - whether you or your husband prevented the other from working by committing acts of domestic violence.

FOR HOW LONG CAN I GET TEMPORARY MAINTENANCE?

The Judge decides for how long you should get temporary maintenance. Usually it lasts until the case is settled by agreement or decided at trial. Temporary maintenance ends when the Judge issues a final judgment of divorce.

FINAL MAINTENANCE:

HOW DOES THE JUDGE DECIDE HOW MUCH FINAL MAINTENANCE MUST BE PAID?

The Judge decides how much final maintenance you will receive after the divorce by using a different method than for temporary maintenance.

- The Judge looks at your and your husband's current and future finances.
- The Judge will first decide whether to order your husband to pay any maintenance at all. The Judge will look at:
 - What your standard of living was while you and your husband were married and getting along.
 - Whether you have enough income and property to take care of yourself.
 - Whether your husband has enough income and property to take care of you.

If the Judge decides that your husband should pay maintenance, the Judge will then decide the amount of the maintenance and how long it will last. The Judge will look at:

- The amount of income and property (including property received from the divorce) you have and your husband has.
- How long you were married.
- How old and how healthy you both are.
- Your present and future ability to earn an income, and your husband's present and future earning ability.
- Your current ability to support yourself and, if you need training to be able to support yourself, how long it will take you to get it.

- Whether you started your career late because you were married and raising children, and if your ability to earn money is less because of this.
- Which parent any children of the marriage are living with.
- The taxes each of you has to pay.
- What you did to help your husband get an education or training so he could get a good job, such as taking care of your children, or having a paying job, or taking care of the home.
- Whether you or your husband wasted property you got during the marriage.
- Whether you or your husband gave away property before starting your divorce case to prevent the other one from getting any of it.
- Whether you or your husband prevented the other from working by committing acts of domestic violence.
- Anything else the Judge thinks it is fair to look at. If your husband is paying child support to you, he may not have enough money to pay maintenance, too.

Note: You may ask the Judge to apply the formula for temporary maintenance (described above) instead of using this approach in order to decide how much final maintenance you should get. The formula gives you more certainty of the amount of maintenance. Or, if the Judge has given you temporary maintenance during the divorce case, you may ask the Judge to give you the same amount of final maintenance in the divorce judgment. The court can either use the amount of temporary maintenance or use another amount.

Sometimes a husband and wife will have a prenuptial or postnuptial agreement that says the wife will not receive any maintenance if they get divorced. If their prenuptial or postnuptial agreement was made in the proper way, the Judge cannot order the husband to pay maintenance.

A written agreement made before a marriage is called a prenuptial agreement. A written agreement made during a marriage is called a postnuptial agreement.

FOR HOW LONG CAN I GET FINAL MAINTENANCE?

The Judge can order your ex-husband to pay maintenance for any length of time the Judge thinks is right. It may be for a short period of time or for the rest of your life. The Judge might decide that when your children are old enough to go to school full-time, you should get a paying job. So when your youngest child goes to school full-time, your maintenance may end.

Sometimes an ex-wife will receive lifetime maintenance in a judgment of divorce. This may happen if the Judge thinks she will never be able to earn enough money on her own so she can have a comparable standard of living to what she had while married AND if her ex-husband can afford to pay it.

Maintenance will stop automatically if either party dies unless there is a court order or written agreement that says it continues. A Judge could order an ex-husband to take out life insurance to make sure that even if he dies, his ex-wife gets the amount of maintenance he owed.

Maintenance ordered by the Court, even if for the rest of your life, also will stop if the person receiving it gets married again, unless there is a written agreement that it continues or the agreement does not say that it stops. Because these agreements are complicated, you should have a lawyer help you in making one that the court will enforce.

HOW AND WHY CAN THE AMOUNT OF SPOUSAL SUPPORT OR MAINTENANCE BE CHANGED?

An order of spousal support or maintenance can be changed, but this is difficult to do.

Note: If you have an order of spousal support from Family Court and have not started a divorce case, you can request that the Family Court change the order. If you have an order of maintenance in a judgment of divorce from Supreme Court, you can go to either Supreme Court or Family Court to request a change, depending on what the judgment says.

The Judge or Support Magistrate must see that there has been a substantial (major) change in your life or your husband's life, or both of your lives, in order to change the amount of spousal support or maintenance your husband must pay.

Sometimes the Judge or Support Magistrate will decrease (lower) the amount of spousal support or maintenance (called a downward modification).

Changing the amount of spousal support or maintenance does not happen automatically, or when your husband or ex-husband decides on his own that he should not have to pay anymore. Your husband or ex-husband must go to court and ask the Judge or Support Magistrate for a downward modification. For example, if your husband or ex-husband, through no fault of his own, loses his job or becomes ill, he can ask the Judge or Support Magistrate to lower the amount of spousal support or maintenance he has to pay. Or if you get a good job, or a job that pays you more, your husband or ex-husband may ask the Judge or Support Magistrate to lower the amount of spousal support or maintenance he has to pay. Or your husband or ex-husband may ask the Judge or Support Magistrate to let him stop paying altogether.

Sometimes the Judge or Support Magistrate will increase (raise) the amount of spousal support or maintenance (called an upward modification). To receive an increase, you must go to court and ask for an upward modification. You will have to show that you cannot support yourself (even though the Judge or Support Magistrate thought you would be able to) or that circumstances have changed significantly since the Judge or Support Magistrate ordered your husband or ex-husband to pay spousal support or maintenance. For example, if your husband or ex-husband no longer has to pay child support, after the children have grown up, you can ask the Judge or Support Magistrate to raise the amount of spousal support or maintenance you receive.

If you and your husband or ex-husband made a valid agreement, in writing, about spousal support or maintenance, it is harder to get the Judge or Support Magistrate to change it. A valid agreement could be a prenuptial agreement, a postnuptial agreement, a separation agreement or a stipulation of settlement in your divorce case.

In that case, whoever wants an upward or downward modification must show the Judge or Support Magistrate extreme hardship.

IF MY HUSBAND OR EX-HUSBAND DOES NOT PAY, WHAT CAN BE DONE?

If you also get child support:

If you have children and you also have an order for child support, you can get help to collect money from your husband or ex-husband from the Support Collection Unit (SCU) in Family Court.

Unless you are very sure that your husband or ex-husband will pay the support ordered by the Judge or Support Magistrate, it is a good idea to have the judgment or order require your husband or ex-husband to pay both child support and spousal support or maintenance directly to SCU. SCU then will send the money to you.

There may be a couple of weeks delay right at the beginning. Then, you will start receiving the money from SCU on a regular basis as long as your husband or ex-husband or his employer sends the support monies to SCU. SCU will keep track of what is paid by your husband or ex-husband and sent to you in its computer system.

Note: If you need to keep your address confidential so that an abusive husband or ex-husband cannot find you, do not give SCU your home or work address. Instead, give SCU the address of a person you trust who lives or works in another county or state. Ask this person to forward your checks to you and have this person promise not to give your address to SCU or anyone else.

If he stops paying, pays late or pays less than the Judge or Support Magistrate ordered, he will be in default. If he is supposed to be sending payments to SCU, SCU can enforce the support orders by getting a payroll deduction or income execution.

An income execution is a paper which says that if he does not pay within 14 days, or show that he already has paid the support, his employer will be required to pay what he owes out of his earnings.

His employer must then deduct the current support payments, as well as a portion of any arrears until they are all paid, from each of his paychecks before he gets them and send the money to SCU. You do not have to go back to court for this to happen.

If child support and spousal support or maintenance are not ordered to be paid to SCU at first, but your husband or ex-husband later defaults (fails to pay you money), you can ask SCU to collect the support. It's best to do this at the main SCU office located at 151 West Broadway, 4th Floor, New York, New York 10013.

See *The Basics Series* booklet on Child Support for more information.

If you do not also get child support:

If you do not have an order for child support, you cannot use SCU to collect or to enforce your order for spousal support or maintenance.

But you can go back to Family Court for help. If you do not have a lawyer, you can enforce your order for spousal support or maintenance by getting an income execution from the clerk of the court which issued the order. If you have a lawyer, your lawyer can send an income execution directly to your husband or ex-husband.

The employer then must deduct the current support payments, as well as a portion of any arrears until they are all paid, from each of his paychecks before he gets them and send the money directly to you.

You also can get an order directly from the Family Court that makes your husband or ex-husband's employer deduct the current support payments, as well as a portion of any arrears until they are all paid, from each of his paychecks and send the money directly to you.

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