



THE BASICS

Getting Spousal Support in
New York State

ACKNOWLEDGEMENTS

The Cross-Borough Collaboration (“CBC”) originated as a joint project of the Brooklyn Bar Association Volunteer Lawyers Project and Her Justice. Originally launched in 2002, the goal of the CBC was and continues to be the dissemination of clear and concise informational booklets for the general public on various common legal issues. Her Justice has periodically updated these booklets, known as “The Basics” series. We continue to distribute them to our clients on an ongoing basis. We would like to extend our thanks to the Brooklyn Bar Association Volunteer Lawyers Project for their initial involvement in this important project. Her Justice thanks and acknowledges Leila F. Bose, Translator & Coordinator of Translation Services at Cravath, Swaine & Moore LLP for their very generous in-kind donation of the Spanish translation of The Basics booklets.

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CITY, STATE AND NATIONAL GOVERNMENT AGENCIES

Administration for Children's Services, Parents' & Children's Rights Unit and Division of Legal Services

C-PLAN: Child Planning and Advocacy New, Public Advocate's Office

New York City Department of Health

New York State Department of Social Services

New York State Office of Court Administration

Social Security Administration

State of New York Unified Court System

U.S. Department of Justice, Immigration and Naturalization Service

U.S. Department of Justice, Violence Against Women Office

U.S. Department of State Office of Children's Issues

ORGANIZATIONS

Association of the Bar of the City of New York

Bronx Legal Services

The Door

The Family Center

Family Violence Prevention Fund

Lambda Legal Defense and Education Fund

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The Legal Aid Society, New York City, Juvenile Rights and Civil Divisions

Legal Information for Families Today (LIFT)

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THE BASICS

Getting Spousal Support in
New York State

**BEFORE YOU LOOK FURTHER
PLEASE READ THIS:**

Throughout this booklet, you will see references to “spouse” and “parent.” The legal definitions of these terms are evolving as the courts endeavor to address the many types of families that exist in our modern world, and in particular to take into account the rights of the LGBTQ community. It is well-settled that your “spouse” is the person you are married to, regardless of gender or sexual orientation. However, with regard to “parental” relationships, the law is evolving and less clear. If you have questions about your rights with regard to a child in your household who is not biologically related to you and whom you have not adopted, you should seek the advice of an attorney by calling a local Bar Association or a legal services organization in the borough where you live.



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 one legally married spouse pays to the other spouse while they are still married. So long as the two people are legally married, there should be no time limit on spousal support.

WHAT IS MAINTENANCE?

Maintenance is money one ex-spouse pays to their former spouse after they get divorced. Some people may call this alimony or spousal maintenance. The amount and duration of the maintenance are 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?

People who are legally married to each other are required to support each other, when necessary. You may be able to get spousal support or maintenance, even if you are working, if you really need it and your spouse or ex-spouse 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 spouse or ex-spouse 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. 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 spouse or ex-spouse has to pay any spousal support or maintenance while you are receiving public assistance in the form of cash, they will have to pay it to HRA or OTDA.

You can get spousal support while you and your spouse 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 spouse, but only if you are in danger of needing public assistance.

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

Both Family Court and Supreme Court can order your spouse 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 spouse 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 spouse 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 spouse and you.

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

The Support Magistrate looks at your and your spouse's current finances and then uses a formula to figure out how much spousal support must be paid.

If you are the one asking for spousal support, the Support Magistrate looks at your income and your spouse's income up to \$178,000. If you and your spouse have children together, the Support Magistrate also looks at who is paying child support and who has custody of the children. The Support Magistrate takes all of this information and uses a mathematical formula to figure out how much spousal support your spouse will be required to pay you.

There are spousal support calculators available to determine whether you are entitled to spousal support under the law:

www.nycourts.gov/divorce/calculator_013116.pdf



You can scan this QR code to access the webpage with spousal support calculators

After figuring out the amount of spousal support that your spouse will have to pay, the Support Magistrate will then look to see if the amount is too little or too much for him or her to pay. The Support Magistrate looks at:

- Your and your spouse’s age and health
- Your and your spouse’s ability to work in the future and your work history
- Your and your spouse’s need for education or training expenses
- If your spouse’s obligation to pay child support ends, then spousal support may need to be recalculated
- If you or your spouse wasted marital money or hid money from each other
- If you or your spouse stopped the other from working

If your spouse has health insurance through their job, union, or any other organization, they must cover you under the policy, even if the Support Magistrate does not order them to pay you any spousal support.

The Support Magistrate can order your spouse 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 SPOUSE ARE MARRIED, A SUPPORT MAGISTRATE CANNOT LIMIT THE LENGTH OF TIME YOU CAN RECEIVE SPOUSAL SUPPORT.

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

If you were never legally married, the Support Magistrate cannot order the person you call your spouse to pay spousal support to you. Even if you live with your spouse and act like you are married, if it is not a legal marriage, you cannot receive spousal support. A common law marriage is not legal in New York State.

Once you get divorced, spousal support ends. This does not mean that you cannot get future financial support from your ex-spouse. But anything he or she 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 spouse dies, spousal support ends.

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

There is a Family Court in each borough of New York City. You can start a support case in the borough where you live or in the borough where your spouse 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 spouse (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.

The clerk will give you two copies of the support petition, a summons (a notice that tells your spouse when and where they 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 spouse. Although only the summons and support petition must be served upon your spouse, it is a good idea to give your spouse the financial disclosure affidavit at the same time, so they can start filling it out as soon as possible.

WHO SHOULD SERVE MY SPOUSE 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. 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 spouse.

*An affidavit of service is a sworn statement of the person who delivered the court papers to your spouse.

Your spouse should get the papers at least eight days before the next court date (the return date). Your spouse is allowed to ask the Support Magistrate for more time. Then you and your spouse will have to come back to court at a later date.



IMPORTANT: YOU CANNOT SERVE THE PAPERS ON YOUR SPOUSE YOURSELF.

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 spouse, 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 spouse's place of work or home. If your spouse is served this way, the server must also mail a second copy of the summons and petition to your spouse'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 spouse.
4. By sending the papers by certified mail, return receipt requested, to your spouse'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 SPOUSE AND I COME TO COURT ON THE RETURN DATE?

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

Before the hearing, you and your spouse 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 spouse's financial situations. If the Support Magistrate thinks either you or your spouse has lied on the financial disclosure affidavit, the Support Magistrate can hold it against you or your spouse when deciding the amount of support.

At the hearing, the Support Magistrate will have you and your spouse, 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 spouse provides. This can be bills, canceled checks, receipts, W-2s and other papers which back up the information you and your spouse 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 spouse should pay.

GETTING MAINTENANCE AS PART OF A DIVORCE IN SUPREME COURT

The Supreme Court decides whether your spouse 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 spouse, 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 spouse 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-spouse has to pay you. The judgment also says for how long your ex-spouse owes this amount to you. If your ex-spouse has made a request, the judgment may also say how much maintenance you have to pay them, if any.

TEMPORARY MAINTENANCE:

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

While your divorce case is going on, if your spouse earns more than you, you may also ask the Judge to award you temporary financial support, which your spouse will pay to you until the divorce becomes finalized. This type of support is called “temporary” or “pendente lite” maintenance.

Even if your spouse earns more than you, the Judge will not order your spouse to pay temporary maintenance if they would not be able to support themselves while making payments.

If you are seeking temporary maintenance and child support, the amount you receive in temporary maintenance gets subtracted from your spouse’s income and added to your income before child support is calculated.

Also, remember that maintenance works both ways, so if you earn substantially more than your spouse, they may ask the Judge to make you pay maintenance.

HOW LONG CAN I CONTINUE TO 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.

There are maintenance calculators available to determine whether you are entitled to temporary maintenance under the law: **www.nycourts.gov/divorce/calculator_013116.pdf**



You can scan this QR code to access the webpage with maintenance calculators

FINAL MAINTENANCE:

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

The court will take into consideration how many years you and your spouse have been married in order to determine the length of time for which you will receive maintenance.

The Judge looks at your and your spouse's current finances and then uses a formula to figure out how much maintenance must be paid.

If you are the one asking for maintenance, the Judge looks at your income and your spouse's income up to \$178,000. If you and your spouse have children together, the Judge also looks at who is paying child support and who has custody of the children. The Judge takes all of this information and uses a mathematical formula to figure out how much maintenance your spouse will be required to pay you.

After figuring out the amount of maintenance that your spouse will have to pay, the Judge will then look to see if the amount is too little or too much for them to pay. The Judge looks at:

- You and your spouse's age and health
- You and your spouse's ability to work in the future and your work history
- You and your spouse's need for education or training expenses
- If your spouse's obligation to pay child support ends, then spousal support may need to be recalculated
- If you or your spouse wasted marital money or hid money from each other
- If you or your spouse stopped the other from working

Sometimes a married couple will have a prenuptial or **postnuptial agreement*** that says that one spouse 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 spouse 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 will look at the length of your marriage in order to determine for how long you will receive maintenance. The Judge will also look at the age at which both you and your spouse will retire and if you and your spouse have any retirement assets. The Judge will order lifetime maintenance in certain cases. Maintenance will end when either one party dies; or the one receiving maintenance remarries; or if the maintenance is modified by the court.

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-spouse to take out life insurance to make sure that even if they die, the ex-spouse gets the amount of maintenance that is owed.

Maintenance ordered by the Court, even if it is 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.

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

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

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.*

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

Sometimes the Judge or Support Magistrate will 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 spouse or ex-spouse to pay spousal support or maintenance. For example, if your spouse or ex-spouse 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 spouse or ex-spouse 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 SPOUSE OR EX-SPOUSE 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 spouse or ex-spouse from the Support Collection Unit (SCU) in Family Court.

Unless you are very sure that your spouse or ex-spouse will pay the support ordered by the Judge or Support Magistrate, it is a good idea to have the judgment or order require your spouse or ex-spouse to pay both child support and spousal support or maintenance directly to SCU. SCU will then 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 spouse or ex-spouse or his/her employer sends the support monies to SCU. SCU will keep track of what is paid by your spouse or ex-spouse and sent to you in its computer system.

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

NOTE: *If you need to keep your address confidential so that an abusive spouse or ex-spouse 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.*



AN INCOME EXECUTION IS A PAPER WHICH SAYS THAT IF HE OR SHE DOES NOT PAY WITHIN 14 DAYS, OR SHOW THAT HE OR SHE ALREADY HAS PAID THE SUPPORT, THE EMPLOYER WILL BE REQUIRED TO PAY WHAT IS OWED OUT OF HIS OR HER EARNINGS.

The employer must then deduct the current support payments, as well as a portion of any arrears until they are all paid, from each paycheck 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 spouse or ex-spouse 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 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 spouse or ex-spouse.

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

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

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