



# SPOUSAL SUPPORT AND MAINTENANCE

Legal Information Series

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## **Spousal Support and Maintenance**

Both **Spousal Support** and **Maintenance** refer to money that a person pays their spouse or ex-spouse to help support them. The term that's used will depend on whether you are in Family Court or Supreme Court.

- Family Court uses the term **Spousal Support**
- Supreme Court uses the term **Maintenance** or **Spousal Maintenance**

We'll explain these terms in more detail below.

### **What is Spousal Support?**

Spousal Support is money a person pays to their spouse **while they are married**. The spouse who has more money and resources usually pays Spousal Support to the spouse with less money and resources.

Spousal Support can be paid if you and your spouse aren't living together. If you are living with your spouse, you will only be able to get spousal support if:

- You are in danger of needing public assistance, **or**
- You show the court that your spouse is not helping you with important expenses, such as rent or utilities, and you cannot afford them yourself.

As long as you are married, there is no time limit on Spousal Support payments. If you and your spouse get divorced in the future, the Spousal Support order will stop once you are divorced.

You can get Spousal Support through Family Court. A Support Magistrate will handle your case – not a Judge. Support Magistrates only hear Child Support and Spousal Support cases. It isn't necessary for you to have a lawyer in Family Court, but you can get one if you want.

**You can't go to Family Court for Spousal Support if you are going through a divorce. You must request maintenance in the divorce case.** For more information, see our guide on [Divorce](#).

### **What is Maintenance?**

Maintenance is money a person pays to their former spouse **after they get divorced**. During a divorce case, the spouse with less money and resources can ask the other spouse to pay Maintenance.

Divorce cases are seen in the Supreme Court, not Family Court. A Judge will handle the case. The Judge will decide whether to give you Maintenance both **during the divorce case** and **after you are divorced**. You will most likely need a lawyer during this process. You can only get a maintenance order from the Supreme Court, whether you're in the middle of a divorce case or you're already divorced.

Maintenance may also be called “Spousal Maintenance.” It used to be called “Alimony.”

**Does Spousal Support or Maintenance Affect Public Assistance?**

If you receive public assistance in cash, you can’t get Spousal Support or Maintenance. Instead, the Human Resources Administration (HRA) will take the payments made to you, as repayment for the assistance you’re provided.

## **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 Spousal Support case in the borough where you live or in the borough where your spouse lives. Again, you don't need a lawyer in Family Court, but you're allowed to get one. For help finding a lawyer, visit [www.lawhelpny.org](http://www.lawhelpny.org).

You don't need to pay to start a case in Family Court. To start your case, go to a Family Court clerk and ask them to help you with a "Spousal Support Petition." A Spousal Support Petition is a form that tells both your spouse and the Support Magistrate what kind of support you want.

The clerk will help you fill out the petition. After you're done, the clerk will give you:

- 2 copies of the Spousal Support Petition
- 2 copies of a Summons with a return date
- 2 copies of the Financial Disclosure Affidavit
- 1 Affidavit of Service

The final step is to give one set of these papers to your spouse. This is called Serving the Papers.

### **How Do I Serve the Papers?**

1. Serving the papers means giving the court documents to your spouse. You must find someone to serve the papers for you. We'll call this person the Server. This person:
  - Can't be you
  - Must be at least 18 years old
  - Can't be directly involved in the case, such as your child under 21.
  - Must live in the state where your spouse is served
  - Can be the sheriff of the county in which your spouse lives

**For serving papers outside New York State:** The requirements for who's allowed to serve papers are different in each state. If you're having papers served to someone outside New York State, make sure the server is legally permitted to serve papers there. You may find out who can serve from an attorney, law office, or court located in that state. You can also check [lawhelp.org](http://lawhelp.org) for more information.

2. Once you've found a Server, give them the following documents:
  - 1 copy of the Spousal Support Petition
  - 1 copy of the Summons
  - 1 copy of the Financial Disclosure Affidavit
  - The Affidavit of Service

3. Server must give everything **except** the Affidavit of Service to your spouse. Papers must be served:
  - In person
  - At least 8 days before your return date in court
  - Not on a holiday or on Sunday, or on a different day of religious observance
4. Next, the Server must fill out the Affidavit of Service in front of a Notary Public. A Notary Public is a person licensed by the state government who confirms that you signed a document. You can find their locations online. The Server must then give you the original Affidavit of Service. Make a copy of the signed document for your records, and then give it to the Support Magistrate on your first court appearance. If the Sheriff served your spouse, then they will give the Affidavit of Service directly to the Support Magistrate for you.
5. Sometimes the spouse will hide from the Server to get out of going to court. **The server must try to serve the papers at least 3 times on different dates, and at different times.** If the Server is not able to serve the papers within 3 attempts, they should sign an “Affidavit of Attempted Service” in front of a Notary Public. An Affidavit of Attempted Service describes all the times and places where the Server tried to give the papers to your spouse.

### **Before the Return Date:**

Before the hearing, you must fill out and sign the Financial Disclosure Affidavit in front of a Notary Public. The Financial Disclosure Affidavit is a document that reports your income and your expenses. You should include proof of your income, such as a W-2 form from the past year or a current paystub.

### **What If I Need an Interpreter in Court?**

The courts will give you an interpreter if you need one. If English isn't your first language and you'd be more comfortable in a different language, you should tell the clerk right away.

Spanish language interpreters are in court almost every day. There are also interpreters for many other languages. If you want to know if an interpreter is available, call the court before you go in.

### **Will I Need to Pay for Anything in Court?**

In Family Court, there are no fees. You will not be asked to pay for your case.

## **What Happens When I Go Back to Court on the Return Date?**

**On the return date**, you and your spouse will appear in Family Court in front of a Support Magistrate. A Support Magistrate is not a Judge. They only see Child and Spousal Support cases, nothing else. Make sure you give your completed Financial Disclosure Affidavit to the Support Magistrate. The Support Magistrate may ask you and your spouse questions about your work and finances. If they believe the information they receive from your documents and answers is enough, they may issue a Final Order of Spousal Support.

You and your spouse must give each other the Financial Disclosure Affidavits you each filled out. This is so you can make sure your spouse is telling the truth as you understand it.

If the Support Magistrate feels that more information about your case is needed, **they may schedule a trial**. A trial is a more formal court appearance. During a trial:

- You and your spouse will testify about your financial situation
- You can introduce documents as evidence of you and your spouse's financial situation
- You can bring witnesses to testify if they have important information about you and your spouse's financial situation

After trial, the Support Magistrate will decide if you need Spousal Support and if so, how much you will receive. The Support Magistrate will issue a "Final Order of Spousal Support."

## **How Much Spousal Support Will I Get?**

The Support Magistrate uses a formula to figure out how much Spousal Support to award. The following information about both you and your spouse will be considered in the formula:

- Income (up to \$178,000)
- Age and health
- Ability to work in the future
- Education and experience in the workplace

Additionally, the Support magistrate will look to see if:

- You or your spouse stopped the other from working
- You or your spouse are paying Child Support

**Note:** if your spouse has health insurance from their employer, they must cover you with that insurance as long as you are married. You can ask the Support Magistrate to order this as part of your Spousal Support.

## **How Long Will My Spousal Support Payments Last?**

You can get Spousal Support as long as you are married and your spouse is alive. Once you get divorced, Spousal Support ends. This does not mean that you cannot get future financial support from your ex-spouse. But anything they pay you after the divorce will be called Maintenance. Read on to learn how to get Maintenance as part of your divorce.



## **How Do I Get Maintenance Through the Supreme Court?**

The Supreme Court is very different from Family Court. It costs money to start a case in Supreme Court, and you will need a lawyer, because it's hard to navigate the Supreme Court alone. Check out [Her Justice's Divorce Guide](#) for more info.

### **Here are the basics of Maintenance:**

1. The Supreme Court decides during your divorce case whether you should get Maintenance. While your divorce case is active, you may be able to get Temporary Maintenance if:
  - a. Your spouse earns a lot more than you earn and you need their financial support to manage your living expenses, and
  - b. Your spouse can afford to pay temporary maintenance and also support themselves
2. Temporary Maintenance only lasts until the end of your divorce case, or once you sign a settlement agreement. If you want Maintenance after your divorce, ask for "**Final Maintenance.**" This is money you will receive from your ex-spouse after your divorce. You should have a lawyer help you with this, as Final Maintenance agreements are very complicated.

### **How Does the Judge Decide How Much Final Maintenance Must Be Paid?**

The formula for Final Maintenance is the same as the formula for Spousal Support. The following information about both you and your spouse will be considered in the formula:

- Income (up to \$178,000)
- Age and health
- Ability to work in the future
- Education and experience in the work place

Additionally, the Judge will look to see if:

- You or your spouse stopped the other from working
- You or your spouse is paying Child Support

If you signed a prenuptial or postnuptial agreement, you may not be able to get Maintenance. These agreements may say that one spouse will not receive any maintenance if they get divorced. If you have such an agreement, you should speak to a divorce lawyer about whether it will prevent you from getting Maintenance.

## **How Long Will Final Maintenance Last?**

Orders of Final Maintenance usually have an end date. For example, the Judge could order that the payments last for 2 years. To decide how long the payments will last, the Judge will look at:

- The length of your marriage
- The age at which both you and your spouse retired or will retire
- Any retirement assets either you or your spouse have

Maintenance will stop automatically if you or your ex-spouse die or if you re-marry. A Judge could also tell your ex-spouse to get life insurance to cover the amount of maintenance they owe you, as protection for you if they die while you are to be paid maintenance. A Judge can order that you receive maintenance throughout for the rest of your life, but this is rare.

## What Happens After Court?

### **Can the Amount of Spousal Support or Maintenance Change?**

Orders of Spousal Support or Maintenance can be changed, but it's difficult. It is particularly difficult to change a Maintenance Order. To change either, the court must see that there has been a big change of circumstances in your life or your (ex-)spouse's life. For example, if someone has become severely ill or disabled.

### **How is Spousal Support or Maintenance Changed?**

If you receive Spousal Support and are not getting divorced, you can change it through Family Court. If you receive Maintenance, you can change it through either the Supreme or Family Court.

1. To get a **Downward Modification** (to lower the amount), you or your (ex-)spouse must ask the court to lower the support amount. The court might do this if:
    - Your (ex-)spouse becomes ill or retires, or
    - You get a higher paying job than you had before
  2. To get an **Upward Modification** (raise the amount), you need to show that you:
    - Cannot support yourself with what you have now, and
    - Are in danger of relying on public assistance, which is called "becoming a public charge."
- OR**
- You need to show that circumstances have changed substantially since you first went to court. For example, if your (ex-)spouse no longer has to pay child support, you can ask the Judge or Support Magistrate to raise the amount of spousal support or maintenance you receive.

### **How Can I Collect Spousal Support or Maintenance?**

1. If you have Child Support, the Support Collection Unit (SCU) can collect money from your (ex-)spouse for both child support and spousal support or maintenance. The SCU will then send the money to you.
2. If you don't have Child Support, the SCU will not collect spousal support or maintenance. You can ask the Support Magistrate or the Judge for an **Income Execution** or an **Income Deduction Order**. Both of those give the SCU permission to collect the money from your spouse's paycheck and send it to you.
  - It will be called an Income Deduction Order if your spouse is a government employee

- It will be called an Income Execution if your spouse is not a government employee

### **What if the Person Refuses to Pay?**

1. If either an Income Execution or an Income Deduction Order exist, the money will be taken automatically from them.
2. If no such order exists, **and**
  - it has been at least 3 months since you received a payment, **or**
  - you are owed at least \$2,000

You can file a **Violation Petition**. See page 4 for instructions on filing in Family Court.