

Understanding Spousal Maintenance obligations

It is not widely known that when we enter into a marriage or de facto relationship, in certain circumstances, a spouse may be liable to maintain the other in the event that their marriage or de facto relationship breaks down.

This responsibility to financially assist the other is set out in the Family Law Act and exists if that person cannot meet their own reasonable expenses from their personal income or assets.

Where this need exists both parties have an *equal* duty to support and maintain each other as far as they can and this obligation can continue even *after* separation and divorce. The extent of the support depends on what the other party can afford to pay.

Spousal Maintenance is different to Child Support

It is important to note that spousal maintenance is **not** child support.

Child support is paid for the benefit of children and *in addition* to that the Family Court can order a party to pay spousal maintenance.

The Department of Human Services administers Australia's Child Support Scheme and works with separated parents to manage their child support responsibilities for the benefit of their children.

What is Spousal Maintenance exactly?

The Family Court can *only* make an order for one party to pay "spousal maintenance" to the other if the spouse making the application is unable to adequately meet his or her own reasonable needs and the other spouse has the capacity to pay.

Maintenance for a former spouse or de facto partner is the division of **future income and/or current capital assets** following the breakdown of a marriage or de facto relationship. In certain circumstances, separating couples can have an obligation to provide ongoing financial payments in the form of weekly or lump sum payments by way of maintenance for their former spouse or de facto partner.

This liability to maintain a former spouse or de facto partner can continue until their death or until they have the financial capacity to support themselves. Usually the payment of spousal maintenance is tailored to end upon the occurrence of a specific event, for example, the person receiving maintenance completing training or re-skilling, securing employment or commencing a new de facto relationship.

Time Limits

Applications for spousal maintenance for married couples must be made within 12 months of their divorce becoming final whereas applications for de facto partner maintenance must be made within 2 years of the breakdown of the de facto relationship.

It is possible to apply outside the time limits but the Court does not always grant these late applications.

What if the person is in a new relationship?

A former spouse is not entitled to maintenance if they marry another person. If you start a new de facto relationship the court will have regard to the financial relationship between that person and their new de facto partner when considering whether the former spouse can support himself or herself adequately.

What does a Court consider?

Spousal maintenance is not automatic. In deciding a maintenance application, a Court considers the needs of an applicant and the respondent's capacity to pay including the parties:

- Age and health
- Income, property, and financial resources
- Ability to work
- Ability to earn an income as a result of the marriage
- Suitable standard of living

It is most likely to be ordered in cases where one party is at home with the care of young children and therefore unable to exercise their income earning capacity.

Other examples could be where one party has been out of the workforce for a significant period of time raising the children and has become de-skilled or unemployable due to age, or where one party was unable to work due to illness.

Summary

A party's obligation to pay spousal maintenance may be discharged in various ways including through periodic and regular payments or by way of a lump sum payment. It may also exist for different periods of time.

Although spousal maintenance is generally intended to operate only for a short period of time following separation to enable applicants to get back on their feet, in certain circumstances, it may be appropriate that spousal maintenance be paid for a longer period of time.

The calculation of and assessment for the need of spousal maintenance requires a deep understanding of family law and time limits apply.

If you know someone who needs help and would like to have a confidential discussion please arrange for them to call us on (03) 9459 5764 or email admin@rtlegal.com.au.