

## WHAT IS MAINTENANCE AND HOW DOES IT WORK IN COLORADO

By Diane Carlton

### Maintenance-what is that?

Maintenance is the term used in Colorado for alimony or spousal support. Maintenance is money paid by a higher earning party to the lesser earning party for his or her support. Maintenance is separate from support for children.

### Who qualifies for maintenance?

Either spouse can qualify for maintenance. The spouse with a higher income may be required to pay maintenance to the spouse with the lower income. The factors the court is to consider in determining whether a maintenance award is appropriate are:

- 1) The financial resources of the recipient spouse and ability for the spouse to meet his or her needs independently,
- 2) The financial resources of the payor spouse including the ability for the spouse to meet his or her reasonable needs while paying maintenance,
- 3) The lifestyle during the marriage,
- 4) The distribution of marital property,
- 5) Both parties' income and employability,
- 6) Whether one party has historically earned a historically higher or lower income than during the divorce,
- 7) The duration of the marriage,
- 8) The age and health of the parties,
- 9) Significant economic or non economic contribution to the marriage or the development or advancement of a party,
- 10) Whether the circumstances at the time of the divorce warrant an award of nominal maintenance in order to preserve a claim of maintenance in the future, and
- 11) Any other factor the court deems relevant

### How is a maintenance award determined?

Guidelines for determination of the amount and duration of maintenance were established by the legislature in 2015. The guidelines can be found in Colorado Revised Statutes sec. 14-10-114 and are also available on the state of Colorado website. [www.courts.state.co.us](http://www.courts.state.co.us) The guidelines are advisory only, and are not mandatory.

The guidelines can be used to determine maintenance for parties whose combined income is \$360,000 or less a year. Essentially the formula for the monthly payment amount is 40% of the higher earnings spouse's income less 50% of the lower spouse's income, with another check which may lower the base amount.

The term or duration of maintenance is zero for marriages of less than 3 years time, and then is based on a sliding scale tied to the length of the marriage. The duration is capped at 10 years for marriages of 20 years or longer.

For couples earning a combined income of more than \$360,000 a year, the award of maintenance is based solely on the court's discretion.

#### Do judges follow the maintenance guidelines?

Most judges use the maintenance guidelines as a starting point for their assessment of whether a maintenance award is appropriate. Then they look to other factors in deciding whether or not to follow the advisory guidelines. Some judges routinely follow the guidelines; other judges do not.

#### When does maintenance end?

Maintenance ends on the earlier of either parties' death, remarriage by the recipient spouse, or the expiration of the term awarded by the court.

Can a maintenance award be changed? Unless maintenance is "contractual" meaning the parties agreed it could not be changed, maintenance can be modified upon a "substantial and continuing change in circumstances" of either the payor or the recipient.

#### Tax issues

The payor spouse receives a tax deduction for maintenance payments. The recipient spouse is required to report maintenance as income and will be taxed on the amount received.

As you can see, there are many factors that the court will consider in deciding whether to award maintenance in a divorce case. The lawyers at Litvak Litvak Mehrtens and Carlton have extensive experience in handling maintenance issues. If you have more questions, you can contact the firm to set up a consultation with a knowledgeable attorney.