

FAMILY LAW: An overview of Spousal Maintenance

Following what types of relationship may spousal maintenance be paid?

Spousal maintenance may be required to be paid by one party to the other after separating from one of the following relationships:

- a marriage of the parties
- a de facto relationship between the parties, if the separation occurred after 1 March 2009.

What is spousal maintenance?

Spousal maintenance is a monetary payment which may be made by one party of the relationship, to the other, following the breakdown of the relationship. Spousal maintenance may take the form of a regular payment or as a lump sum payment. Whether spousal maintenance is paid, will depend on:

- the capacity of one party to provide financial support to the other party; and
- the other party's need for such financial support.

The payment of spousal maintenance from one former spouse to another, will usually occur, where one of the parties is the income earner and the other has inadequate means of support as a consequence of the separation. Ongoing income payments may be required if there are insufficient assets to distribute, which would give the party with a need, some other means of support.

Maintenance may be payable for a short period of time or may be payable indefinitely. Spousal maintenance can be paid under a Court order or by agreement between the parties.

Spousal maintenance can be included in a property settlement, by way of a lump sum or an allowance of the percentage distribution of property, as a substitute for ongoing regular payments. This can be done by nominating a lump sum amount in a settlement and/or in orders or by adjusting the property distribution percentage.

What is the test for determining eligibility for spousal maintenance?

The test for determining if a party to a former relationship may be eligible for spousal maintenance (financial support provided by the other party of the relationship) includes the following:

1. Whether either party is able to support him or herself adequately without maintenance: In the circumstances where both partners are struggling financially, such financial support will not be payable by either party to the relationship.
2. Whether a party is reasonably able to pay: Does one party have the capacity to pay such maintenance from their income? A party will not be compelled to sell assets for the purpose of paying spousal maintenance.
3. Whether it would be proper for the payment to be made in the circumstances.

There are a number of factors that a Court will consider before making a decision to order one party to the relationship to pay financial support to the other party to the relationship. These including:

- The age and state of health of both the parties;
- The income, property and financial resources of both the parties and their physical and mental capacity for appropriate employment;
- Whether either of the parties has care of a child of the relationship under 18 years of age;
- The financial needs and obligations of each of the parties;
- The responsibility of either of them to support any other person;
- A standard of living that “in all the circumstances is reasonable”;
- Whether the payment of maintenance to the other party under consideration would enable them to undertake a course of education or training to start a business so as to be able to earn income;
- The extent to which the party under consideration has contributed to the income, earning capacity, property and financial resources of the other property;
- The duration of the relationship and the extent to which it has affected the earning capacity of either party;
- The need to protect a party who wishes to continue their role as parent;
- If either party is cohabiting with another person, the financial circumstances relating to cohabitation;
- The terms of any Order altering the interest of either of the parties in any property owned by either of them;
- Any other fact or circumstance, which, in the opinion of the Court, the justice of the case requires to be taken into account.

Require further information or advice?

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If you require advice regarding any of the following:

- spousal maintenance
- property settlements
- divorce applications
- de facto and registered relationships
- child and parenting matters
- making a new Will or power of attorney document to take account of changed circumstances
- buying or selling property

Swanwick Murray Roche can provide timely tailored advice about your circumstances. We can offer professional advice and a compassionate approach when dealing with family and personal matters.

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