

Spousal Maintenance (Alimony) in Texas

Revised September 2011

Texas did not even have post-divorce alimony until 1997. What most other states call “alimony” is called “spousal maintenance” in Texas. The Legislature in 2011 increased the possible amount and duration of spousal maintenance for divorces filed on or after September 1, 2011. This information sheet summarizes the new spousal maintenance law. The law is different for divorces filed before 9/1/2011.



Who is Eligible for Spousal Maintenance?

To be eligible for spousal maintenance, the marriage must have lasted at least ten (10) years except when there has been a conviction or deferred adjudication for family violence, a spouse cannot support him or herself because of an incapacitating physical or mental disability or is the custodian of a severely disabled child of the marriage who will be cared for by the spouse asking for maintenance.

The court may order maintenance for either spouse only if the spouse seeking maintenance will lack sufficient property, including the spouse's separate property, on dissolution of the marriage to provide for the spouse's minimum reasonable needs **and:**

(1) the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence, committed during the marriage against the other spouse or the other spouse's child and the offense occurred: (A) within two years before the date on which a suit for dissolution of the marriage is filed; or (B) while the suit is pending;

or

(2) the spouse seeking maintenance:

- is unable to earn sufficient income to provide for the spouse's minimum reasonable needs because of an incapacitating physical or mental disability; or
- has been married to the other spouse for 10 years or longer and lacks the ability to earn sufficient income to provide for the spouse's minimum reasonable needs; or
- the custodian of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability that prevents the spouse from earning sufficient income to provide for the spouse's minimum reasonable needs.

Texas Family Code Sec. 8.051.

What is Maximum Spousal Maintenance?

The monthly amount of spousal maintenance is limited to the lesser of:

- \$5,000.00 or
- 20% of the average gross monthly income of the spouse paying maintenance.

Gross income includes virtually any kind of income, such as wages, overtime, bonuses, interest, dividends, self-employment income, net rental income and retirement benefits. Gross income does not include return of principal or capital, accounts receivable, social security, SSI, federal welfare benefits or Veterans benefits.

Texas Family Code Sec. 8.055

How Long Can Spousal Maintenance Last?

Spousal Maintenance can be ordered to be paid after divorce for as long as:

- 5 years if there was a conviction or deferred adjudication for domestic violence
- 5 years if the parties have been married for at least 10 years
- 7 years if the parties have been married for at least 20 years
- 10 years if the parties have been married for at least 30 years.
- Indefinitely, as long as a spouse is severely disabled and unable to support him or herself or is caring for a severely disabled child.

Texas Family Code Sec. 8.054.

The Court shall limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking maintenance to earn sufficient income to provide for the spouse's minimum reasonable needs, unless the ability of the spouse to provide for the spouse's minimum reasonable needs is substantially or totally diminished because of: (A) physical or mental disability of the spouse seeking maintenance; (B) duties as the custodian of an infant or young child of the marriage; or (C) another compelling impediment to earning sufficient income to provide for the spouse's minimum reasonable needs.

Texas Family Code Sec. 8.054(2).



Alimony is a 1949 film available on the Internet and on CD from Amazon.

You Must Try To Find a Job!

It is a rebuttable presumption that maintenance for a spouse who says he or she cannot earn enough to meet his or her reasonable needs is not warranted unless the spouse seeking maintenance has exercised diligence in: (1) earning sufficient income to provide for the spouse's minimum reasonable needs or (2) developing the necessary skills to provide for the spouse's minimum reasonable needs during a period of separation and during the time the suit for dissolution of the marriage is pending.

Texas Family Code Sec. 8.053(a)

Termination or Modification of Maintenance

Spousal maintenance ends upon the death of either party, the remarriage of the person receiving maintenance or upon a court finding that the person receiving maintenance cohabits with another person with whom he or she has a dating or romantic relationship in a permanent place of abode on a continuing basis.

Texas Family Code Sec. 8.056

The person who is ordered to pay maintenance can later file a motion with the court to reduce or end the payments if there has been a material or substantial change reflected in the factors in Sec. 8.052 (see above) for either of the ex-spouses or to a disabled child of their marriage, if applicable.

Texas Family Code Sec. 8.057

Spousal Maintenance in Texas

It is all up to the Judge! In Texas, the judge (not a jury) decides whether to award spousal maintenance, how much it will be and how long it will last. A judge can order wage withholding for maintenance. Often, the same amount of support is awarded for each month or the judge can order, for example, \$2,000 per month for 18 months and \$1,000 per month for 12 months. In general, a judge is more likely to award spousal maintenance if the judge feels sorry for the spouse asking for it, is really angry at the spouse asked to pay and if the spouse who will pay is a high income earner. A spouse who is awarded a lot of community property in the divorce, especially cash, is less likely to get spousal maintenance.

Factors the Court May Consider

A court that determines that a spouse is eligible to receive maintenance under this chapter shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:

- (1) each spouse's ability to provide for that spouse's minimum reasonable needs independently, considering that spouse's financial resources on dissolution of the marriage;
- (2) the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to earn sufficient income, and the availability and feasibility of that education or training;
- (3) the duration of the marriage;
- (4) the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;
- (5) the effect on each spouse's ability to provide for that spouse's minimum reasonable needs while providing periodic child support payments or maintenance, if applicable;
- (6) acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;
- (7) the contribution by one spouse to the education, training, or increased earning power of the other spouse;
- (8) the property brought to the marriage by either spouse;
- (9) the contribution of a spouse as homemaker;
- (10) marital misconduct, including adultery and cruel treatment, by either spouse during the marriage; and
- (11) any history or pattern of family violence.

Texas Family Code Sec. 8.052.

Tax Effects of Spousal Maintenance

In general, alimony is taxable income for the person who receives it and may be deducted under current IRS law by the spouse who pays it. A payment to a former spouse under a divorce order is alimony, if the spouses do not file a joint return with each other, and if all the following conditions are met:

- The payment must be made by cash (including checks and money orders, payable on demand);
- The court order does not designate the payments as not includible in the gross income of the recipient spouse and not deductible by the payor spouse.
- The spouses are not members of the same household at the time the payments are made.
- There is no liability to make the payments after the death of the recipient spouse.
- The payment is not child support.

Some payments to a third party (such as paying a mortgage or an ex-spouse's utility bills) can qualify as alimony under IRS rules. Always consult an accountant or tax attorney.

IRS Publication 504 (2010), Divorced or Separated Individuals

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