

Proposed Maintenance Standards Act

Amendment to DRL 236, Part B, Subdivision 6

6. Temporary Maintenance and Final Maintenance Obligation

b. *FINAL MAINTENANCE*

(1) Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for alimony or maintenance, the court shall make its award for maintenance pursuant to the provisions of this paragraph.

(2) For purposes of this subdivision, the following definitions shall be used:

(a) "Maintenance standards amount" shall mean the dollar amount derived by the application of subparagraph (3) of this subdivision.

(b) "Maintenance standards duration" shall mean the durational period determined by the application of subparagraph (4) of this subdivision.

(c) "Maintenance standards obligation" shall mean the maintenance standards amount and the maintenance standards duration.

(d) "Maintenance" shall mean a sum to be paid pursuant to a final court order or decree dissolving or annulling a marriage, declaring the nullity of a marriage, or a valid agreement, between the parties, by one party to the other.

(e) "Income" shall mean:

(i) all forms of income as defined in the Child Support Standards Act and codified in DRL 240 and Family Court Act, Section 413; and

(ii) income from income producing property distributed or to be distributed pursuant to DRL 236 B (5).

(f) "Payor" shall mean the spouse with the higher income.

(g) "Payee" shall mean the spouse with the lower income.

(h) "Income Cap" shall mean the combined income of payor and payee up to and including three hundred thousand dollars (\$300,000); provided, however, beginning January thirty-first, two thousand fourteen and every two years thereafter, the income cap shall increase by the product of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States Department of Labor Bureau of Labor Statistics for the two year period rounded to the nearest one thousand dollars. The Office of Court Administration shall determine and publish the income cap.

(i) Length of marriage shall mean the period from the date of marriage until the date of commencement of action.

(j) "Self-support reserve" shall mean the self-support reserve as is defined in the Child Support Standards Act and codified in DRL 240 and Family Court Act, Section 413.

(3) The maintenance standards amount shall be determined in accordance with the provisions of this paragraph:

(a) The amount for all combined income up to and including the income cap shall be determined as follows:

- (i) The court shall determine the income of each party.
- (ii) The court shall subtract twenty percent of the income of the payee from thirty percent of the income of the payor.
- (iii) The court shall then multiply the amount of combined income up to and including the cap by forty percent.
- (iv) The court shall subtract the income of the payee from the amount derived from (iii).
- (v) The amount shall be the lower of the amounts determined by (ii) and (iv); if the amount determined by (iv) is a less than or equal to zero, the amount shall be \$0.

(b) Where the combined income of the payor and payee exceeds the income cap, the court shall determine the maintenance standards amount as follows:

- (i) The court shall perform the calculations set forth in subsections (i) through (v) of paragraph (a) for the combined incomes of payor and payee.
- (ii) The court shall perform the calculations set forth in subsections (i) through (v) of paragraph (a) for the combined incomes up to and including the cap.
- (iii) The maintenance standards amount shall be either:
 - (A) the result of the calculation in (i) of this paragraph or
 - (B) the amount that is the result of the calculation in (ii) of this paragraph plus an amount that the court shall determine by consideration of the factors set forth in subsections (i) through (xii) of paragraph 5.
- (iv) In any decision made pursuant to subsection (iii), the court shall set forth the factors it considered and the reasons for its decision. Such written order may not be waived by either party or counsel.

(c) Notwithstanding the provisions of paragraph (3) of this subdivision, where the annual amount of the maintenance obligation would reduce the payor's income below the self-support reserve for a single person, the maintenance standard amount shall be the difference between the payor's income and the self-support reserve.

(4) The maintenance standards duration shall be determined as follows:

(a) The court shall determine the maintenance standards duration in accordance with the following schedule:

| Length of the Marriage | % of the Length of the Marriage for which Maintenance Will Be Payable |
|--|---|
| 0 up to and including 5 years | 30% |
| more than 5, up to and including 7.5 years | 40% |
| more than 7.5, up to and including 10 years | 50% |
| more than 10, up to and including 12.5 years | 60% |
| more than 12.5, up to and including 15 years | 70% |
| more than 15, up to and including 17.5 years | 80% |
| more than 17.5, up to and including 20 years | 90% |
| more than 20, up to and including 25 years | 100% |
| more than 25 years | nondurational |

(b) Notwithstanding the provisions of subparagraph (a) of this subdivision, maintenance shall terminate upon the death of the payor or payee.

(5) (a) The court shall order the maintenance standards obligation in accordance with paragraphs (3) and (4) of this subdivision, unless the court finds that the maintenance obligation is unjust or inappropriate and adjusts the maintenance standards obligation accordingly based upon consideration of the following factors:

- (i) The age and health of the parties;
- (ii) The future earning capacity of the parties;
- (iii) The wasteful dissipation of marital property;
- (iv) Transfers or encumbrances of property made in contemplation of a matrimonial action without fair consideration;
- (v) The existence and duration of a pre-marital joint household or a pre-divorce separate household;
- (vi) Acts by one party against another that constitute egregious fault likely to shock the conscience;

- (vii) The availability and cost of medical insurance for the parties;
- (viii) The care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that has inhibited or continues to inhibit a party's earning capacity;
- (ix) The inability of one party to obtain meaningful employment due to age or absence from the workforce;
- (x) The need to pay for exceptional additional expenses for the child/children, including but not limited to, schooling, day care and medical treatment;
- (xi) The tax consequences to each party;
- (xii) The equitable distribution of the marital property;
- (xiii) Any other factor which the court shall expressly find to be just and proper.

(b) Where the court finds that the maintenance standards obligation is unjust or inappropriate and the court adjusts the maintenance standards obligation pursuant to this subdivision, the court shall set forth, in a written order, the amount of the unadjusted maintenance standards obligation, the factors it considered, and the reasons that the court adjusted the maintenance standard obligation. Such written order shall not be waived by either party or counsel.

(6) Where either or both parties are unrepresented, the court shall not enter a maintenance order or judgment unless the unrepresented party or parties have been informed of the maintenance standards obligation.

(7) A validly executed agreement or stipulation voluntarily entered into between the parties after the effective date of this subdivision presented to the court for incorporation in an order or judgment shall include a provision stating that the parties have been advised of the provisions of this subdivision, and that the maintenance provided for therein would presumptively result in the correct amount of maintenance. In the event that such agreement or stipulation deviates from the maintenance standards obligation, the agreement or stipulation must specify the amount that such maintenance standards obligation would have been and the reason or reasons that such agreement or stipulation does not provide for payment of that amount. Such provision may not be waived by either party or counsel. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the maintenance obligation provided such agreements or stipulations comply with the provisions of this paragraph. The court shall, however, retain discretion with respect to maintenance pursuant to this section. Any court order or judgment incorporating a validly executed agreement or stipulation that deviates from the maintenance standards obligation shall set forth the court's reasons for such deviation.

(8) In addition to financial disclosure required in section two hundred thirty-six of this article, the court may require that the income and/or expenses of either party be verified with documentation including, but not limited to, past and present income tax returns, employer statements, pay stubs, corporate, business, or partnership books and records, corporate and business tax returns, and receipts for expenses or such other means of verification as the court determines appropriate. Nothing herein shall affect any party's right to pursue discovery pursuant to this chapter, the Civil Practice Law and Rules, or the Domestic Relations Law.

(9) When a party has defaulted and/or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order the maintenance standards obligation based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of newly discovered or obtained evidence.

(10) Maintenance may be modified pursuant to paragraph (b) of subdivision 9 of Section 236 of this part.

(11) In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of this paragraph, brought pursuant to this article, the maintenance standards set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.