

Maintenance (Alimony) In Illinois

What used to be called "alimony" is now called maintenance in Illinois. Maintenance is money paid by one former spouse to his or her former spouse for the latter's support, pursuant to a Judgment or Order. Arguably, based on the newly created civil unions in Illinois, maintenance may be ordered in the future from one former civil union partner to his or her former civil union partner.

Maintenance paid pursuant to an order during the divorce is called "temporary maintenance". It is temporary because it only lasts until the case is over. The case is over by entry of a divorce decree (Judgment for Dissolution of Marriage or Judgment for Dissolution of Civil Union). If the final judgment contains maintenance obligation, then maintenance will be paid in accordance with the terms contained in the judgment (as opposed to whatever was stated in the order requiring temporary maintenance).

A judgment may order maintenance of various durations and various types. Maintenance may be for a specified period of time, say four years, or it may be permanent. Maintenance set for a specific period of time may terminate, without the possibility of extension. Conversely, maintenance may be reviewed at the end of that time, which is discussed more fully below.

Maintenance can be reviewable, modifiable or non-modifiable. Maintenance that is reviewable, often has a set duration at which time it is to be reviewed. For instance: husband shall pay wife \$1,000 per month for four years at which time it will be reviewed. At the review the Judge will look at the issue basically anew, addressing all the same factors it would when maintenance was first awarded plus what has occurred since it was awarded.

Modifiable maintenance can be modified upon filing a petition to modify and showing a substantial change in circumstances. Unlike at a review, if the party wanting to modify the maintenance cannot demonstrate a relevant, substantial change in circumstances, the Judge cannot modify maintenance. In addition, the substantial change in circumstances cannot be caused on purpose by the person seeking the modification, for instance, by quitting her job.

Non-modifiable maintenance simply cannot be modified. If non-modifiable maintenance is granted at \$1,000 per month for 48 months, the duration, 48 months, and the amount \$1,000 per month, cannot be changed. However, if equity necessitates it, allowances can be made. If it would be patently unfair to force someone to make payments, a court can, for example, abate the maintenance. Say the person paying maintenance lost his job because the company went bankrupt. If the Court abates maintenance until the person is

able to make payments again, the maintenance continues to accrue at \$1,000 per month, and will need to be repaid later.

The above concepts can, and often are used in conjunction. For instance, maintenance can be set at \$1,000 per month for 48 months, terminating at the end of the 48th month unless one of the parties files to review maintenance during that 48th month. This means that if neither party files for review of maintenance in time, the maintenance is terminated forever.

In addition, when a provision is silent as to whether maintenance is modifiable, as in the above instance, maintenance is modifiable by default. If maintenance is to be non-modifiable, the provision must state so. In the above example therefore, if a substantial change in circumstances occurred before the 48th month, a party could seek a maintenance modification.

Something to really guard against are unclear provisions. There should be no questions left unanswered after reading a maintenance provision. For example, in the above example, if a petition for review is filed during the 48th month, are maintenance payments due after the 48th month and until the court decides the petition for review? Being unable to answer this question has caused many individuals a lot of time, stress and money for attorneys to argue over the right interpretation.