



## **THE BASICS**

Getting Spousal Support  
in New York State

## THE BASICS: GETTING SPOUSAL SUPPORT IN NEW YORK STATE

In this booklet, we call the person who receives support the wife or ex-wife. And we call the person who pays support the husband or ex-husband. This is the way it usually happens because more often men earn more money than women.

Spouse means husband or wife.

### **WHAT IS SPOUSAL SUPPORT?**

Spousal support is money a legally married husband pays to his wife while they are married.

### **WHAT IS SPOUSAL MAINTENANCE?**

Spousal maintenance is money an ex-husband pays to his ex-wife after they get divorced. There usually is a time limit for payment of spousal maintenance.

## **WHEN CAN I GET SPOUSAL SUPPORT OR MAINTENANCE?**

Men and women legally married to each other have to support each other, when necessary. This means a wife or ex-wife can receive financial support from her husband or ex-husband. And a husband or ex-husband can receive financial support from his wife or ex-wife.

You may be able to get spousal support or spousal maintenance, even if you are working, if you really need it and your husband or ex-husband can afford it.

If you are on public assistance, you give up your right to receive spousal support or spousal maintenance directly from your husband or ex-husband to the Human Resources Administration (HRA) in New York City. The Department of Social Services (DSS) used to be the agency that collected spousal support and spousal maintenance, so you may hear people still refer to DSS. And in the rest of the state, the agency that collects spousal support and spousal maintenance is the Office of Temporary and Disability Assistance (OTDA).

So if your husband or ex-husband has to pay any spousal support or spousal maintenance while you are on public assistance, he will have to pay it to HRA or OTDA.

## THE BASICS: GETTING SPOUSAL SUPPORT IN NEW YORK STATE

You can get spousal support while you and your husband are in the midst of a divorce case. You can get spousal support even if you are still living with your husband.

### **WHICH COURT CAN ORDER MY HUSBAND TO PAY SPOUSAL SUPPORT OR SPOUSAL MAINTENANCE AND WHO DECIDES?**

**Both Family Court and Supreme Court** can order your husband or ex-husband to pay spousal support or spousal maintenance.

In the Supreme Court, your divorce case will be decided by a Judge. That same Judge will decide whether your husband must pay spousal support or spousal maintenance.

In Family Court, a Hearing Examiner will, in most cases, decide whether your husband has to pay spousal support or spousal maintenance. A Hearing Examiner is not a Judge, but Hearing Examiners can legally decide support cases.

## **WHEN CAN I GO TO FAMILY COURT TO ASK FOR SPOUSAL SUPPORT?**

You can go to Family Court when there is no divorce case pending in Supreme Court between your husband and you.

A pending case is one that currently is going on and is not finished.

## **HOW DOES THE JUDGE OR HEARING EXAMINER DECIDE HOW MUCH SPOUSAL SUPPORT MUST BE PAID?**

The Judge or Hearing Examiner looks at your and your husband's current finances.

If you are the one asking for spousal support, the Judge looks at what you reasonably need and whether you can pay for what you need.

The Judge or Hearing Examiner next looks at whether your husband has enough money, or is able to earn enough money, to pay a fair and reasonable amount of spousal support.

In deciding the amount of spousal support your husband must pay, the Judge or Hearing Examiner may look at the cost of any necessary expenses, which can include:

- housing
- food
- clothing
- care or medical attention
- education
- any other proper and reasonable expenses

If your husband has health insurance through his job, his union, or any other organization, he must cover you under the policy, even if the Judge does not order him to pay you any spousal support.

The Judge or Hearing Examiner can order your husband to take out life insurance or accident insurance payable to you.

## **FOR HOW LONG CAN I GET SPOUSAL SUPPORT?**

Spouses must support each other for life.

As long you and your husband are married, a Judge or Hearing Examiner cannot limit the length of time you can receive spousal support.

However, a Judge or Hearing Examiner can change the amount of spousal support your husband must pay you. This often happens. It can happen when your finances or your husband's finances change, like when you get or lose a job.

If you were never legally married, the Judge cannot order the man you call your husband to pay spousal support to you.

Sometimes people think if they just live together and act like they are married, called common law marriage, they are legally married. But common law marriage is NOT a legal marriage in New York.

And if your marriage is annulled, spousal support ends.

Once you get divorced or your marriage is annulled, spousal support ends. This does not mean that you cannot get future financial support from your ex-husband. But anything he pays after the divorce or annulment will be called spousal maintenance.

## **HOW DO I START A SPOUSAL SUPPORT CASE IN FAMILY COURT?**

There is a Family Court in each county. You can start a support case in the county where you live or in the county where your husband lives. You start your case by filing a support petition.

A support petition is a form that tells both your husband (the respondent) and the Judge what you (the petitioner) want.

Family Court has special clerks to help people fill out the support petition and file the case. It does not cost any money to start a case in Family Court. Although it is helpful to have a lawyer, you do not need a lawyer to file a case in Family Court. This Court is set up to help people who do not have lawyers.

The clerk will give you two copies of the support petition, a summons (a notice that tells your husband when and where he must show up in Family Court) and a financial disclosure affidavit form.

A financial disclosure affidavit, also called a statement of net worth, asks for detailed information about a person's income and expenses.



One set of these papers must be given to (served upon) your husband. Although only the summons and support petition must be served upon your husband, it is a good idea to give him the financial disclosure affidavit at the same time, so he can start filling it out as soon as possible.

## **WHO SHOULD SERVE MY HUSBAND WITH THE COURT PAPERS?**

The person who delivers (serves) the summons and support petition must be someone who is at least 18 years old and who is not involved in the support case. This person will have to fill out an affidavit of service and sign it in front of a notary public.

An affidavit of service is a sworn statement of the person who delivered the papers that your husband got the court papers.

The court clerk will give you this form when you file the support petition, and you will need to give it to the person who serves your husband.

**IMPORTANT: You cannot serve the papers on your husband.**

Your husband should get the papers at least 8 days before the next court date (the return date). If he does not, or even if he does and asks the Judge or Hearing Examiner for more time, he will get more time. Then you and he will have to come back to court at a later date.

There are several ways to serve, but the first way is the best way:

1. By personal service (having someone hand the papers personally to your husband, the respondent).
2. By handing the papers to another person who is old enough and responsible (a person of suitable age and discretion). This can be at your husband's place of work or home. If he is served this way, the server must also mail a second copy of the summons and petition to your husband's last known home address. The server also must identify (by name or physical description) the person who was given the summons and petition. The server must write in the date, time and place that person was given the papers on the affidavit of service.
3. If, after 2 or 3 reasonable efforts, service cannot be made, you can ask the Judge or Hearing Examiner to order another kind of service that has the best chance of getting actual notice of the case to your husband.
4. By sending the papers by certified mail, return receipt requested, to your husband's or last known address. People do not often use this method because this kind of service does not usually work.

The respondent may not be home to sign for the mail, may not go to the post office to sign for the mail, or may be at home when the mail is delivered but refuse to sign for it.

## **WHAT HAPPENS WHEN MY HUSBAND AND I COME TO COURT ON THE RETURN DATE?**

You and your husband will appear in Family Court in front of a Hearing Examiner. If you and your husband cannot agree on how much support he will pay, the Hearing Examiner will schedule your case for an evidentiary hearing at a future time.

Before the hearing, you and your husband must give each other your financial disclosure affidavits. These affidavits have to be filled out correctly and honestly, and signed, under oath, in front of a notary public. It is important for the Hearing Examiner to have a true picture of your and your husband's financial situations. If the Hearing Examiner thinks either you or your husband has lied on the financial disclosure affidavit, the Hearing Examiner can hold it against you or him when deciding what amount of support he must pay.

At the hearing, the Hearing Examiner will have you and your husband, and your witnesses (if any), testify under oath about your financial situations. The Hearing Examiner will look at any documentary evidence you or your husband provide. This can be bills, canceled checks, receipts, W-2's and other papers which back-up the information you and your husband have put on your financial

disclosure affidavits.

After the hearing, the Hearing Examiner will give a permanent order of spousal support or spousal maintenance if the Hearing Examiner thinks your husband should pay.

## **WHEN CAN I GO TO FAMILY COURT TO ASK FOR SPOUSAL MAINTENANCE?**

When you get divorced from your husband, you will get a written divorce judgment (an order) from the Supreme Court. The judgment will say how much spousal maintenance your ex-husband has to pay you (if any) or how much spousal maintenance you have to pay him (if any).

If you want to modify (or change) the amount of spousal maintenance he owes you (or you owe him), you first have to look at your divorce judgment.

! If it says the Supreme Court has **exclusive jurisdiction** of issues of support and maintenance, you cannot go to Family Court.

! If it says that Family Court has **concurrent jurisdiction** of issues of support and maintenance, **you can go to either Family Court or Supreme Court.**

**! If it doesn't say anything** about either concurrent jurisdiction or exclusive jurisdiction of issues of support and maintenance, **you can go to either Family Court or Supreme Court.**

If you want to get more spousal maintenance from your ex-husband, you will ask for an upward modification. If your ex-husband wants to pay less spousal maintenance to you, he will ask for a downward modification.

### **HOW DOES THE JUDGE OR HEARING EXAMINER DECIDE HOW MUCH SPOUSAL MAINTENANCE MUST BE PAID?**

The Judge or Hearing Examiner looks at your and your husband's current and future finances.

The Judge or Hearing Examiner will first decide whether to order your husband to pay any spousal maintenance at all. The Judge or Hearing Examiner will look at:

- ! What your standard of living was while you and your husband were married and getting along.**
- ! Whether you have enough income and property to take care of yourself.**
- ! Whether your husband has enough income and property to take care of you.**

If the Judge or Hearing Examiner decides your husband should pay spousal maintenance, next the Judge or Hearing Examiner will decide how much the spousal maintenance will be and how long it will last. The Judge or Hearing Examiner will look at:

- ! The amount of income and property (including property received from the divorce) you have and your husband has.
- ! How long you were married.
- ! How old and how healthy you both are.
- ! Your present and future ability to earn an income, and your husband's present and future earning ability.
- ! Your current ability to support yourself and, if you need training to be able to support yourself, how long it will take you to get it.
- ! Whether you started your career late because you were married and raising children, and if your ability to earn money is less because of this.
- ! Which parent any children of the marriage are living with.
- ! The taxes each of you has to pay.

- ! What you did to help your husband, such as taking care of your children, or having a paying job, or taking care of the home, to help your husband get an education or training so he could get a good job.
- ! Whether you or your husband wasted property you got during the marriage.
- ! Whether you or your husband gave away property before starting your divorce case to prevent the other one from getting any of it.
- ! Anything else the Judge or Hearing Examiner thinks it is fair to look at.

If your husband is paying child support to you, he may not have enough money to pay spousal support or spousal maintenance, too.

Sometimes a husband and wife will have a prenuptial or postnuptial agreement that says the wife will not receive any spousal maintenance if they get divorced. If their prenuptial or postnuptial agreement was made in the proper way, the Judge cannot order the husband to pay spousal maintenance.

A written agreement made before or during a marriage is called a prenuptial or postnuptial agreement.

## **FOR HOW LONG CAN I GET SPOUSAL MAINTENANCE?**

The Judge or Hearing Examiner can order your ex-husband to pay spousal maintenance for any length of time the Judge or Hearing Examiner thinks is right. It may be for a short period of time or permanently. The Judge or Hearing Examiner might decide that when your children are old enough to go to school full-time, you should get a paying job, so when your youngest child goes to school full-time, your spousal maintenance may end.

Sometimes an ex-wife will receive permanent spousal maintenance. This may happen if the Judge or Hearing Examiner thinks she will never be able to earn enough money on her own so she can have the same standard of living she had while married AND if her ex-husband can afford to pay it.

Sometimes the court order will not say how long spousal maintenance will continue.

Spousal maintenance will stop automatically if either party dies unless there is a court order or written agreement that says it continues. A Judge or Hearing Examiner could order an ex-husband to take out life insurance to make sure that even if he dies, his ex-wife gets the amount of spousal maintenance he owed.

Spousal maintenance ordered by the Court, even if permanent, also will stop if the person receiving it gets married again, unless there is a written agreement that it continues or the agreement does not say that it stops. Because these agreements are complicated, you should



have a lawyer help you in making one that the court will enforce.

## **HOW AND WHY CAN THE AMOUNT OF SPOUSAL MAINTENANCE BE CHANGED?**

The Judge or Hearing Examiner must see that there has been a substantial (major) change in your life or your husband's life, or both of your lives, in order to change the amount of spousal maintenance your husband must pay.

Sometimes the Judge or Hearing Examiner will decrease (lower) the amount of spousal maintenance (a downward modification).

Changing the amount of spousal maintenance does not happen automatically, or when your ex-husband decides on his own that he should not have to pay anymore.

Your ex-husband must go to court and ask the Judge or Hearing Examiner for a downward modification. For example, if your ex-husband, through no fault of his own, loses his job or becomes ill, he can ask the Judge or Hearing Examiner to lower the amount of spousal maintenance he has to pay. Or if you get a good job, or a job that pays you more, your ex-husband may ask the Judge or Hearing Examiner to lower the amount of spousal maintenance he has to pay. Or your ex-husband may ask the Judge or Hearing Examiner to let him stop paying altogether.

Sometimes the Judge or Hearing Examiner will increase (raise) the amount of spousal maintenance. To receive an increase, you must go to court and ask for an upward modification. You will have to show that you cannot support yourself (even though the Judge or Hearing Examiner thought you would be able to) or that circumstances have changed a lot since the Judge ordered your ex-husband to pay spousal maintenance.

For example, if your ex-husband no longer has to pay child support, after the children have grown up, you can ask the Judge or Hearing Examiner to raise the amount of spousal maintenance you receive. Financial hardship (yours or your ex-husband's) also could be a substantial change of circumstance that might persuade a Judge or Hearing Examiner to grant an upward or downward modification.

If you and your ex-husband made a valid agreement, in writing, about spousal maintenance, it is harder to get the Judge or Hearing Examiner to change it. A valid agreement could be a prenuptial agreement, a postnuptial agreement, a separation agreement or a stipulation of settlement in your divorce case.

In that case, whoever wants an upward or downward modification must show the Judge or Hearing Examiner extreme hardship.

## **WHEN WILL THE SUPREME COURT GIVE ME AN ORDER OF SPOUSAL SUPPORT OR SPOUSAL MAINTENANCE?**

The Supreme Court decides whether your husband should pay spousal support or spousal maintenance when you are seeking a divorce. You will ask for spousal support while your divorce case is pending (going on) in Supreme Court.

Supreme Court sometimes refers to spousal support as temporary spousal maintenance or temporary maintenance.

In your divorce case, you can ask the Judge to order your husband to pay a specific amount of spousal maintenance to you for a specific period of time, or for an unlimited period of time. If your request is granted, the final divorce judgment (or order) will state how much spousal maintenance he has to pay. The order normally says how long he has to pay this amount, but it may not.

If you want to modify (or change) the amount of spousal maintenance you receive after your divorce has been granted, you can go back to Supreme Court to request upward or downward modification of the amount ordered in your divorce judgment.

**IF MY HUSBAND OR EX-HUSBAND DOES NOT PAY,  
WHAT CAN BE DONE?**

If you have children and you also have an order for child support, you can get help from the Support Collection Unit (SCU) in Family Court.

Unless you are very sure that your husband will pay the support ordered by the Judge or Hearing Examiner, it is a good idea to have the judgment or order require your husband to pay both child support and spousal support or spousal maintenance directly to SCU. SCU then will send the money to you.

There may be a couple of week's delay right at the beginning. Then, you will start receiving the money from SCU on a regular basis as long as your husband sends the support monies to SCU. SCU will keep track of what is paid by your husband and sent to you in its computer system.

**NOTE: If you need to keep your address confidential so that an abusive husband or ex-husband cannot find you, do not give SCU your home or work address. Instead, give SCU the address of a person you trust who lives or works in another county or state. Ask this person to forward your checks to you and have this person promise not to give out your address to SCU or anyone else.**

If he stops paying, pays late or pays less than the Judge or Hearing Examiner ordered, he will be in default. If he is supposed to be

sending payments to SCU, SCU can enforce the support orders by getting a payroll deduction or income execution.

An income execution is a paper which says that if he does not pay within 14 days, or show that he already has paid the support, his employer will be required to pay what he owes out of his earnings.

His employer must then deduct the current support payments, as well as a portion of any arrears until they are all paid, from each of his paychecks before he gets them and send the money to SCU. You do not have to go back to court for this to happen.

If child support and spousal support or spousal maintenance are not ordered to be paid to SCU at first, but your husband later defaults, you can go to SCU with copies of the support orders.

SCU will enforce the orders in the same way as it would if your husband had been ordered to pay support to SCU right from the beginning.

**If you do not have an order for child support, you cannot use SCU to collect or to enforce your order for spousal support or spousal maintenance.** But you can go back to Family Court for help.

If you do not have a lawyer, you can enforce your order for spousal support or spousal maintenance by getting an income execution from the clerk of the court which issued the order. If you have a lawyer, your lawyer can send an income execution directly to your husband or ex-husband.

The employer then must deduct the current support payments, as well as a portion of any arrears until they are all paid, from each of his paychecks before he gets them and send the money directly to you.

You also can get an order directly from the Family Court that makes your husband or ex-husband's employer deduct the current support payments, as well as a portion of any arrears until they are all paid, from each of his paychecks and send the money directly to you.

**BOOKLETS IN *The Basics Series***

**Abuse and Neglect Cases in New York State**

**Adoption in New York State**

**Becoming a Legal Guardian in New York State**

**Changing Your Name and Social Security Number in New York State**

**Courts in New York City**

**Custody and Visitation in New York State**

**Domestic Violence Issues Faced by Immigrant Women**

**Getting a Divorce in New York State**

**Getting Child Support in New York State**

**Getting an Order of Protection in New York State**

**Getting Spousal Support in New York State**

**Paternity Proceedings in New York State**

To obtain a copy of other booklets in this series, you may contact either:

**The Brooklyn Bar Association Volunteer Lawyers Project**

Telephone: 718.624.3894 E-mail: [bklynvlp@aol.com](mailto:bklynvlp@aol.com)

**inMotion**

Telephone: 718.537.7355 E-mail: [inquiries@inmotiononline.org](mailto:inquiries@inmotiononline.org)

**This collection of booklets – *The Basics Series* – was made possible by a generous grant from The Interest on Lawyer Account Fund of the State of New York.**

**© CROSS-BOROUGH COLLABORATION/2002**

## **SOURCES CONSULTED**

The Brooklyn Bar Association Volunteer Lawyers Project and inMotion thank the following agencies and organizations for generously contributing both written materials and advice to assist the Cross-Borough Collaboration in the preparation of the booklets in *The Basics Series*.

## **CITY, STATE AND NATIONAL GOVERNMENT AGENCIES**

Administration for Children's Services,  
Parents' & Children's Rights Unit and  
Division of Legal Services

C-PLAN: Child Planning and Advocacy Now,  
Public Advocate's Office

New York City Department of Health

New York State Coalition Against Domestic Violence

New York State Department of Social Services

New York State Office for the Prevention  
of Domestic Violence

New York State Office of Court Administration

Social Security Administration

State of New York Unified Court System

U.S. Department of Justice,  
Immigration and Naturalization Service

U.S. Department of Justice,  
Violence Against Women Office

U.S. Department of State,  
Office of Children's Issues

## **ORGANIZATIONS**

Association of the Bar of the City of New York

Bronx AIDS Services Inc.

Bronx Legal Services

The Door

The Family Center

Family Violence Prevention Fund

Lambda Legal Defense and Education Fund

Law Tek Media Group, LLC

The Legal Aid Society, New York City,  
Juvenile Rights and Civil Divisions

Legal Information for Families Today (LIFT)

MFY Legal Services, Inc.

New York Association for New Americans, Inc.  
(NYANA)

New York County Lawyers Association

New York Legal Assistance Group

New York State Bar Association

Pace University School of Law

Safe Horizon Domestic Violence Law Project

Sanctuary for Families Center for  
Battered Women's Legal Services

South Brooklyn Legal Services

Urban Justice Center

Women's Prison Association



## CROSS-BOROUGH COLLABORATION

Founded in 2000, the Cross-Borough Collaboration (CBC) was established to address the severe lack of free legal assistance for indigent women in the area of family law in New York City. Hundreds of thousands of individuals are involved in Family Court proceedings in New York City each year, yet there are fewer than 75 staff attorneys dedicated to family law issues at the City's free legal services agencies. As a result, the vast majority of Family Court litigants are forced to proceed without counsel, and with little information regarding the substantive or procedural aspects of their cases. The CBC addresses the lack of services in two important ways: (1) by coordinating the efforts of The Brooklyn Bar Association Volunteer Lawyers Project (VLP) and inMotion, Inc. to organize efficient, quality pro bono assistance to indigent clients; and (2) by researching and producing extensive plain-language materials for use by women who must represent themselves in cases involving family law and related issues.

