

Understanding Property and Maintenance

Property and maintenance awards are governed by statute. The statute requires property to be divided equitably, or fairly. Maintenance, which is also called alimony, may be awarded based upon statutory factors.

In determining equitable division of property, the court first determines marital and nonmarital estates. The court cannot divide nonmarital property, and divides the marital property equitably. “Equitable” and “equal” are not the same. Equitable means fair, which could be an equal division, or in some other way. The court divides the marital estate as determined by the following statute.

750 ILCS 5/503 (d)

In a proceeding for dissolution of marriage or declaration of invalidity of marriage, or in a proceeding for disposition of property following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's non-marital property to that spouse. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors, including:

- (1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including (i) any such decrease attributable to a payment deemed to have been an advance from the parties' marital estate under subsection (c-1)(2) of Section 501 [705 ILCS 5/501] and (ii) the contribution of a spouse as a homemaker or to the family unit;
- (2) the dissipation by each party of the marital or non-marital property;
- (3) the value of the property assigned to each spouse;
- (4) the duration of the marriage;
- (5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;
- (6) any obligations and rights arising from a prior marriage of either party;
- (7) any antenuptial agreement of the parties;
- (8) the age, health, station, occupation, amount and sources of income,

vocational skills, employability, estate, liabilities, and needs of each of the parties;

(9) the custodial provisions for any children;

(10) whether the apportionment is in lieu of or in addition to maintenance;

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties.

In determining whether, and how much, maintenance to award, the court follows this statute:

750 ILCS 5/504(a)

Maintenance. (a) In a proceeding for dissolution of marriage or legal separation or declaration of invalidity of marriage, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, in gross or for fixed or indefinite periods of time, and the maintenance may be paid from the income or property of the other spouse after consideration of all relevant factors, including:

(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is

the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable.

The concepts of maintenance and property are intertwined, both because the maintenance statute expressly includes the marital and nonmarital apportionment of property as a factor, and because factors such as the standard of living during the marriage and the needs of each party necessarily are measured by the property acquired during the marriage.

Maintenance forms

Maintenance is not an entitlement. This means there is no right to receive maintenance in the same way as there is a right to receive marital property or child support. Maintenance takes two forms. One is time-limited maintenance, where maintenance ends at a specific time and there is no opportunity to extend maintenance.

The second form is often referred to as permanent maintenance. This does not mean maintenance will last forever. Instead, it means there is no ending date. This maintenance may be called rehabilitative maintenance, meaning it is intended to allow the recipient to obtain education, training or to improve financial circumstances. It may also be referred to as reviewable maintenance, meaning one of the parties may bring the maintenance back to court to extend, end, increase or decrease maintenance.

Short-term maintenance will often have an ending date. When there is no termination date, or where the court imposes a termination date after a trial, the statute allows maintenance modification upon a showing of a substantial change of circumstances. Therefore, the good news is that permanent maintenance can be terminated upon a

showing of a substantial change of circumstances at any time. If your financial circumstances worsen, or if the recipient's substantially improve, maintenance can terminate. Maintenance ends upon the death of either party, remarriage of the recipient, or the recipient entering an relationship approximating a marriage called a conjugal cohabitation arrangement.

Tax considerations

Maintenance is taxable to the recipient and deductible from the gross income of the payor for income tax purposes. Child support, on the other hand, has no tax consequences.