

## Current law on maintenance

Pursuant to Section 5/504 of the Illinois Marriage and Dissolution of Marriage Act, either divorcing, or legally separated, spouse may be granted “temporary or permanent maintenance award in amounts and for periods of time as the court deems just, without regard to marital misconduct, for fixed or indefinite periods of time, after consideration of all relevant factors. *See* 750 ILCS 5/504. The following is a common set of circumstances for divorcing or legally separated spouses:

- Husband and Wife were married for many years but had no children together.
- At the start of the marriage, each spouse was earning \$25,000 a year.
- As the years passed, Husband got a new job that more than quadruples his yearly income
- Wife gets a new job that pays minimum wage, but she has a medical condition preventing her from obtaining more lucrative employment opportunities.
- What type of maintenance should Wife be granted, if any?

### Permanent maintenance:

Financial support awarded to a spouse (payable by the other spouse) for the remainder of his or her life, is subject to statutory termination events such as the death of either spouse, or the remarriage or cohabitation of the recipient spouse. Several statutory factors justify an award of permanent maintenance, including length of the marriage; whether the spouses’ present and future earning capacities are greatly disparate; whether the recipient spouse's standard of living since the dissolution has been substantially lowered. *See* 750 ILCS 5/504(a). The benchmark for determining the amount of maintenance is the recipient's reasonable needs in light of the standard of living established during the marriage.

### Temporary/Rehabilitative maintenance:

Temporary maintenance is paid to the recipient spouse for a set period of time which can be reviewable on a specific date without the necessity of either party filing further pleadings. *In re Marriage of Culp*, 341 Ill.App.3d 390, 393 792 N.E.2d 452 (4<sup>th</sup> 2003) It is commonly referred to as rehabilitative maintenance. This term, time-limited in nature, is not found in statutory law, but is used by the trial court in an attempt to provide an incentive for the recipient of spouse to seek additional training or education or seek employment that will provide self sufficiency. *Id.* In other words, rehabilitative maintenance is intended to provide the spouse with an opportunity to adjust to nonmarital life and provide themselves with independent means of support. *In re Marriage of Carpel*, 232 Ill.App.3d 806, 828, 597 N.E.2d 847 (4<sup>th</sup> Dist. 1992). It is paid for a fixed period, after which it terminates, thereby presumably allowing the recipient time to become “rehabilitated” and able to support herself. *See In re Marriage of Phillips*, 244 Ill. App. 3d 577, 186 Ill. Dec. 108, 615 N.E.2d 1165 (4th Dist. 1993).

If at the end of the time [allotted for temporary/rehabilitative maintenance] the receiving spouse “has made no *bona fide* attempt to seek appropriate employment or has refused to accept employment appropriate to her or his skills or interests, payments should then be terminated. This is consistent with the goal of the Illinois Marriage and Dissolution of Marriage Act to permit the parties to sever economic ties within a reasonable time period and to provide an incentive for a spouse seeking maintenance to acquire the skills necessary to become self-

sufficient.” *In re Marriage of Callaway*, 150 Ill.App.3d 712, 716-17, 502 N.E.2d 366, 370 (1<sup>st</sup> Dist. 1986).