A Marriage Lawyer outlines spousal maintenance

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The dynamic of family relationships is unique in every scenario. Yet you can almost guarantee that a marriage lawyer has been informed of many if not all types of household arrangements. Commonly, in relationships one party will inherit the role of being the ‘breadwinner’. In other words, one party is responsible for providing financial support to the other party and/or to their children.

A confronting reality will then be that despite the breakdown of a relationship, a financially dependent party may remain reluctant to leave. Financial dependency can be a compelling force convincing one party to remain in a relationship although it may not foster a safe environment.

How can a marriage lawyer help?

The law has long recognised the responsibility of the financially dependent party to receive continued financial support from a party who is able to provide it after separation. This financial support is described as spousal maintenance.

There are three types of applications for spousal maintenance that can be made to the Court at various times.

The three types of spousal maintenance applications

A marriage lawyer will be able to provide an overview of the spousal maintenance applications and act on your behalf to file which one is most appropriate for your circumstances.

1. Urgent Spousal Maintenance: this type of maintenance provides immediate relief to a party who has just separated and is in desperate need of financial assistance.

2. Interim spousal maintenance: this type of maintenance generally provides relief from the time the application is determined until a final hearing.

3. Final spousal maintenance: this type of maintenance creates an obligation on a party providing financial support to provide ongoing support to the dependent party.

In order for the Court to make an order for spousal maintenance in favour of an applicant, it must ask the following:

- Is the person seeking spousal maintenance unable to support themselves? And
- Is the other party reasonably able to pay?

In determining the above questions the Court takes into account matters listed in 75(2) of the Family Law Act. The more common factors in this section include:

- Age and health of the parties;
- Income, property and financial resources of the parties;
- Care and control of a child aged under 18 years;
- Standard of living enjoyed by the parties during the relationship;
- Duration of the relationship; and
- Whether the relationship has affected a party's ability to earn an income.

What if they were never my spouse?

It is also relevant to mention that as of 1 March 2009, spousal maintenance extends to de facto relationships.

Is there a time limit for my application?

The condition on applying for spousal maintenance in a de facto relationship is that the application must be brought within 2 years of the breakdown of the relationship. For a marriage, the application must be made within 12 months of the divorce becoming final.

It is recommended that separating parties seek advice from a marriage lawyer as to the appropriateness and type of spousal maintenance order that may apply to their particular circumstances.

Contact us on 1800 300 170 or email us at famlaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.