

Spousal Maintenance

Upon separation, there is no automatic right to receive or a duty to pay spousal maintenance to a former spouse.

What is spousal maintenance?

The *Family Law Act* (the Act) provides that one party to the marriage is liable to maintain the other party to the marriage to the extent that:

- one spouse is unable to adequately meet his or her own reasonable needs; and
- the other spouse has the capacity to pay.

You may also be entitled to claim spousal maintenance if you were in a de facto relationship and separated after 1 March 2009.

If you were in a de facto relationship and you separated prior to 1 March 2009, under Queensland Law you are not entitled to spousal maintenance, although any future needs will be taken into account when your property is adjusted.

What factors will the Court consider?

There are a number of factors which the Court considers in determining whether one party is able to adequately support themselves. Some examples include where one party has the care and control of a child or children or, by reason of age or physical or mental incapacity is unable to obtain appropriate gainful employment.

The Court, in determining any liability for spousal maintenance and the amount of spousal maintenance, will consider what is fair and equitable, taking into account (for both spouses):

- your income, property, financial resources and debts;
- your age and state of health;
- your ability to earn an income, and whether this has been affected by the marriage;
- what is considered to be a suitable standard of living; and
- whether the children live with you, or your former spouse.

It is important to remember that, even if one party is unable to adequately support themselves, then the other party is only liable to support that party so far as they are reasonably able to do so.

We can advise you specifically as to your right to receive, or potential liability to pay, spousal maintenance.

In certain situations, the Court also has the power to award spousal maintenance in a lump sum, rather than periodic payments.

The Family Court also has the power to make urgent and interim orders for spousal maintenance until a final trial is reached.

What is the time limit?

Applications for spousal maintenance must be made within 12 months of your divorce becoming final, or within two years from the date that your de facto relationship ended if you separated after 1 March 2009.

Later applications may only be brought with permission from the Court.