

MAINTENANCE

Domestic Relations Law § 236-B(5-a) & (6)

For divorces filed after January 25, 2016

- 5-a. Temporary maintenance awards.
 - a. Except where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part, in any matrimonial action the court, upon application by a party, shall make its award for temporary maintenance pursuant to the provisions of this subdivision.
 - b. For purposes of this subdivision, the following definitions shall be used:
 - (1) “Payor” shall mean the spouse with the higher income.
 - (2) “Payee” shall mean the spouse with the lower income.
 - (3) “Length of marriage” shall mean the period from the date of marriage until the date of commencement of action.
 - (4) “Income” shall mean income as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act without subtracting alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this article and subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of the family court act and without subtracting spousal support paid pursuant to section four hundred twelve of such act.
 - (5) “Income cap” shall mean up to and including one hundred seventy-five thousand dollars of the payor’s annual income; provided, however, beginning January thirty-first, two thousand sixteen and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.
 - (6) “Guideline amount of temporary maintenance” shall mean the dollar amount derived by the application of paragraph c or d of this subdivision.
 - (7) “Self-support reserve” shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act.
 - (8) “Agreement” shall have the same meaning as provided in subdivision three of this part.

- c. Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of temporary maintenance as follows:
 - (1) Where child support will be paid for children of the marriage and where the payor as defined in this subdivision is also the non-custodial parent pursuant to the child support standards act:
 - (a) the court shall subtract twenty-five percent of the payee's income from twenty percent of the payor's income.
 - (b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.
 - (c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.
 - (d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.
 - (e) the guideline amount of temporary maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of temporary maintenance shall be zero dollars.
 - (f) temporary maintenance shall be calculated prior to child support because the amount of temporary maintenance shall be subtracted from the payor's income and added to the payee's income as part of the calculation of the child support obligation.
 - (2) Where child support will not be paid for children of the marriage, or where child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act:
 - (a) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.
 - (b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.
 - (c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.
 - (d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.
 - (e) the guideline amount of temporary maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of temporary maintenance shall be zero dollars.
 - (f) if child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child

support standards act, temporary maintenance shall be calculated prior to child support because the amount of temporary maintenance shall be subtracted from the payor's income pursuant to this subdivision and added to the payee's income pursuant to this subdivision as part of the calculation of the child support obligation.

- d. Where the payor's income exceeds the income cap, the court shall determine the guideline amount of temporary maintenance as follows:
 - (1) the court shall perform the calculations set forth in paragraph c of this subdivision for the income of the payor up to and including the income cap; and
 - (2) for income exceeding the cap, the amount of additional maintenance awarded, if any, shall be within the discretion of the court which shall take into consideration any one or more of the factors set forth in subparagraph one of paragraph h of this subdivision; and
 - (3) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.
- e. Notwithstanding the provisions of this subdivision, where the guideline amount of temporary maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of temporary maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no temporary maintenance is awarded.
- f. The court shall determine the duration of temporary maintenance by considering the length of the marriage.
- g. Temporary maintenance shall terminate no later than the issuance of the judgment of divorce or the death of either party, whichever occurs first.
- h.
 - (1) The court shall order the guideline amount of temporary maintenance up to the income cap in accordance with paragraph c of this subdivision, unless the court finds that the guideline amount of temporary maintenance is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the guideline amount of temporary maintenance accordingly based upon such consideration:
 - (a) the age and health of the parties;
 - (b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;
 - (c) the need of one party to incur education or training expenses;

- (d) the termination of a child support award during the pendency of the temporary maintenance award when the calculation of temporary maintenance was based upon child support being awarded and which resulted in a maintenance award lower than it would have been had child support not been awarded;
 - (e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;
 - (f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;
 - (g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;
 - (h) the availability and cost of medical insurance for the parties;
 - (i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;
 - (j) the tax consequences to each party;
 - (k) the standard of living of the parties established during the marriage;
 - (l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage; and
 - (m) any other factor which the court shall expressly find to be just and proper.
- (2) Where the court finds that the guideline amount of temporary maintenance is unjust or inappropriate and the court adjusts the guideline amount of temporary maintenance pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the guideline amount of temporary maintenance, the factors it considered, and the reasons that the court adjusted the guideline amount of temporary maintenance. Such decision, whether in writing or on the record, shall not be waived by either party or counsel.
 - (3) Where either or both parties are unrepresented, the court shall not enter a temporary maintenance order unless the court informs the unrepresented party or parties of the guideline amount of temporary maintenance.

- i. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into agreements or stipulations as defined in subdivision three of this part which deviate from the presumptive award of temporary maintenance.
- j. When a payor has defaulted and/or the court is otherwise presented with insufficient evidence to determine income, the court shall order the temporary maintenance award based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of newly discovered evidence.
- k. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.
- l. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.
- m. In determining temporary maintenance, the court shall consider and allocate, where appropriate, the responsibilities of the respective spouses for the family's expenses during the pendency of the proceeding.
- n. The temporary maintenance order shall not prejudice the rights of either party regarding a post-divorce maintenance award.

- 6. Post-divorce maintenance awards.
 - a. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for maintenance, in any matrimonial action, the court, upon application by a party, shall make its award for post-divorce maintenance pursuant to the provisions of this subdivision..
 - b. For purposes of this subdivision, the following definitions shall be used:
 - (1) “Payor” shall mean the spouse with the higher income.
 - (2) “Payee” shall mean the spouse with the lower income.
 - (3) “Income” shall mean:
 - (a) income as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act, without subtracting alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this article and subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of the family court act and without subtracting spousal support paid pursuant to section four hundred twelve of such act; and
 - (b) income from income-producing property distributed or to be distributed pursuant to subdivision five of this part.
 - (4) “Income cap” shall mean up to and including one hundred seventy-five thousand dollars of the payor’s annual income; provided, however, beginning January thirty-first, two thousand sixteen and every two years thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.
 - (5) “Guideline amount of post-divorce maintenance” shall mean the dollar amount derived by the application of paragraph c or d of this subdivision.
 - (6) “Guideline duration of post-divorce maintenance” shall mean the durational period determined by the application of paragraph f of this subdivision.
 - (7) “Post-divorce maintenance guideline obligation” shall mean the guideline amount of post-divorce maintenance and the guideline duration of post-divorce maintenance.

- (8) “Length of marriage” shall mean the period from the date of marriage until the date of commencement of the action.
 - (9) “Self-support reserve” shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act.
 - (10) “Agreement” shall have the same meaning as provided in subdivision three of this part.
- c. Where the payor’s income is lower than or equal to the income cap, the court shall determine the guideline amount of post-divorce maintenance as follows:
- (1) Where child support will be paid for children of the marriage and where the payor as defined in this subdivision is also the non-custodial parent pursuant to the child support standards act:
 - (a) the court shall subtract twenty-five percent of the payee’s income from twenty percent of the payor’s income.
 - (b) the court shall then multiply the sum of the payor’s income and the payee’s income by forty percent.
 - (c) the court shall subtract the payee’s income from the amount derived from clause (b) of this subparagraph.
 - (d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.
 - (e) the guideline amount of post-divorce maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of post-divorce maintenance shall be zero dollars.
 - (f) notwithstanding the provisions of this subdivision, where the guideline amount of post-divorce maintenance would reduce the payor’s income below the self-support reserve for a single person, the guideline amount of post-divorce maintenance shall be the difference between the payor’s income and the self-support reserve. If the payor’s income is below the self-support reserve, there shall be a rebuttable presumption that no post-divorce maintenance is awarded.
 - (g) maintenance shall be calculated prior to child support because the amount of maintenance shall be subtracted from the payor’s income and added to the payee’s income as part of the calculation of the child support obligation.

into consideration any one or more of the factors set forth in subparagraph one of paragraph e of this subdivision; and

- (3) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.
- e.
 - (1) The court shall order the post-divorce maintenance guideline obligation up to the income cap in accordance with paragraph c of this subdivision, unless the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the post-divorce maintenance guideline obligation accordingly based upon such consideration:
 - (a) the age and health of the parties;
 - (b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;
 - (c) the need of one party to incur education or training expenses;
 - (d) the termination of a child support award before the termination of the maintenance award when the calculation of maintenance was based upon child support being awarded which resulted in a maintenance award lower than it would have been had child support not been awarded;
 - (e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;
 - (f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;
 - (g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;
 - (h) the availability and cost of medical insurance for the parties;
 - (i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;
 - (j) the tax consequences to each party;
 - (k) the standard of living of the parties established during the marriage;

- (l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage;
 - (m) the equitable distribution of marital property and the income or imputed income on the assets so distributed;
 - (n) the contributions and services of the payee as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and
 - (o) any other factor which the court shall expressly find to be just and proper.
- (2) Where the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate and the court adjusts the post-divorce maintenance guideline obligation pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the unadjusted post-divorce maintenance guideline obligation, the factors it considered, and the reasons that the court adjusted the post-divorce maintenance obligation. Such decision shall not be waived by either party or counsel.
- f. The duration of post-divorce maintenance may be determined as follows:
 - (1) The court may determine the duration of post-divorce maintenance in accordance with the following advisory schedule:

	Length of the marriage marriage for which maintenance will be payable	Percent of the length of the
0 up to and including 15 years	15% - 30%	
More than 15 up to and including 20 years	30% - 40%	
More than 20 years	35% - 50%	

- (2) In determining the duration of post-divorce maintenance, whether or not the court utilizes the advisory schedule, it shall consider the factors listed in subparagraph one of paragraph e of this subdivision and shall set forth, in a written decision or on the record, the factors it considered. Such decision shall not be waived by either party or counsel. Nothing herein shall prevent the court from awarding non-durational maintenance in an appropriate case.

- (3) Notwithstanding the provisions of subparagraph one of this paragraph, post-divorce maintenance shall terminate upon the death of either party or upon the payee's valid or invalid marriage, or upon modification pursuant to paragraph b of subdivision nine of this part or section two hundred forty-eight of this article.
- (4) Notwithstanding the provisions of subparagraph one of this paragraph, when determining duration of post-divorce maintenance, the court shall take into consideration anticipated retirement assets, benefits, and retirement eligibility age of both parties if ascertainable at the time of decision. If not ascertainable at the time of decision, the actual full or partial retirement of the payor with substantial diminution of income shall be a basis for a modification of the award.
- g. Where either or both parties are unrepresented, the court shall not enter a maintenance order or judgment unless the court informs the unrepresented party or parties of the post-divorce maintenance guideline obligation.
- h. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the post-divorce maintenance guideline obligation.
- i. When a payor has defaulted and/or the court makes a finding at the time of trial that it was presented with insufficient evidence to determine income, the court shall order the post-divorce maintenance based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of substantial newly discovered evidence.
- j. Post-divorce maintenance may be modified pursuant to paragraph b of subdivision nine of this part.
- k. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.
- l. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in this subdivision shall not constitute a change of circumstances warranting modification of such agreement.

- m. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in paragraphs c, d and e of this subdivision shall not apply.
- n. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in paragraphs c, d and e of this subdivision shall not apply.
- o. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph e of this subdivision.