



## SPOUSAL MAINTENANCE AFTER DIVORCE

In every divorce action, it must be determined whether one of the spouses should receive spousal maintenance after the divorce.

### Does a spouse have a right to maintenance after divorce?

A spouse does not have an automatic right to maintenance after divorce. The court however has a discretion to make an order which the court finds just in respect of the payment of maintenance by the one party to the other.

### When will the court make a maintenance order?

In terms of Section 7(2) of the Divorce Act, the court will consider the following factors:

- (a) The age of each of the parties.
- (b) The duration of the marriage.
- (c) The standard of living of the parties prior to divorce.
- (d) Their conduct insofar as it may be relevant to the break-down of the marriage.
- (e) The existing and prospective means of each of the parties.
- (f) The respective earning capacities of the parties.
- (g) Any other factor which the court deems relevant.

It is important to note that the court will consider and weigh up all relevant factors. This means that the court may make a maintenance order even if the marriage was of a relatively short duration (*Coetzee vs Coetzee*; *Wiener vs Wiener*) and that a party's financial means and earning capacity would not be necessarily disentitle such party to maintenance after divorce (*P vs P*; *B vs B*; *M vs M*)

#### What form does maintenance after divorce take?

Section 7(2) of the Divorce Act provides that the court may make any order which the court deems just in respect of the payment of maintenance. The court therefore has a wide discretion in making a maintenance order and can for example make the following orders:

- (a) The payment of monthly maintenance for a specific period. This is frequently called rehabilitative maintenance and is aimed at helping a party get back on his / her feet after divorce.
- (b) The payment of monthly maintenance for an indefinite period. This is usually referred to as lifelong maintenance and is normally reserved for cases involving elderly parties, lengthy marriages or where one of the parties has limited financial means or earning capacity.
- (c) The payment of a lumpsum, with or without periodic maintenance, for example to enable a party to buy furniture and other household items (*Zwiegelaar vs Zwiegelaar*).
- (d) Diverse other orders, for instance that one party purchases and maintains a motor vehicle or a house for the other party (*Coetzee vs Coetzee*).

#### The extent of post-divorce maintenance

In principle the parties are entitled to enjoy the same standard of living after divorce that they enjoyed during the marriage, subject to the availability of sufficient financial means to make this possible. If there are not sufficient financial means, the standard of living of both parties will have to be reduced and the court will make an order that is fair to both parties (*P vs P*; *MB vs MB*).

### Termination of maintenance order

If the obligation to pay maintenance was created in a divorce settlement agreement, the terms of the settlement agreement will determine when the obligation terminates.

If the maintenance obligation was created in a divorce order in the absence of a settlement agreement, the obligation will terminate on the date determined by the court order, or the date of death or re-marriage of the party in whose favour the order is given, whichever event first occur (*Odgers vs De Gersugny*).

### Conclusion

The question whether spousal maintenance should be payable after divorce and the form and extent thereof, will depend on the facts of each individual case and the court will have to be persuaded that it will be just to grant a maintenance order in the circumstances. You are welcome to contact one of our attorneys to obtain advice on the likelihood of a maintenance order being granted in your matter.