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ALIMONY & SPOUSAL SUPPORT IN HOUSTON, TX

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INTRODUCTION

Thank you for downloading our special report: about Alimony and Spousal Support, with information that will help you protect your assets and secure your future. For more insider divorce tips, please download our other special reports about Dirty Divorce Tricks, How to Plan and Prepare for Divorce, and Divorce after 50. We understand that you have a lot of questions and concerns about your divorce and we want to help you feel as comfortable with the process as we can. If you would like to speak to one of our highly skilled Law Office of Bryan Fagan, PLLC attorneys, we encourage you to contact us to schedule a free confidential consultation. We're here for you, always. Sincerely, Bryan Fagan, Law Office of Bryan Fagan

WORK WITH A HOUSTON ATTORNEY

In Texas, divorcees can petition for alimony or spousal support. Both alimony and spousal support are regular payments that a spouse makes to provide the other with support during or after a divorce proceeding. These amount of payments is based on the unique needs and earning potential of both spouses.

THERE ARE SEVERAL DIFFERENCES BETWEEN ALIMONY AND SPOUSAL SUPPORT:

- ☑ **Alimony:** The payment given to a spouse during the divorce proceeding as maintenance and a way to help a spouse get back on his or her feet financially. Alimony is also known as spousal maintenance in the state of Texas.
- ☑ **Spousal Support:** Regular, court-mandated payments that last after the divorce as a way to supplement a spouse's income or provide for him or her.

DO YOU QUALIFY FOR SPOUSAL MAINTENANCE?

The court can order spousal maintenance if the spouse who is seeking the payment will not have enough property at the time of the divorce to provide for his or her basic needs. Normally, the courts will consider alimony if one spouse was convicted of committing family violence against the other spouse during the marriage. Also, if the spouse seeking support is unable to earn income because of a disability, the court is normally generous with awarding spousal support.

Spouses can also qualify for support if they were married for ten years or longer and the spouse seeking support is unable to earn enough income to keep up the standard of living that he or she experienced prior to divorce. Also, if the spouse seeking support has custody of a child who has a physical disability, spousal support is common in addition to child support.

WHAT THE COURT CONSIDERS WHEN AWARDING SUPPORT / ALIMONY

The court doesn't just award alimony to any spouse who requests it. The court understands that, sometimes, the paying spouse cannot handle the expense of spousal support and the payments may not be feasible.

FOR THIS REASON, THE COURT WILL TYPICALLY LOOK AT A VARIETY OF FACTORS, INCLUDING:

- ☑ The financial resources of each spouse at the time of the divorce
- ☑ The length of the marriage
- ☑ The age, employment history, earning ability, and physical and emotional health of the spouse
- ☑ Child support obligations
- ☑ Use of community property funds
- ☑ Each spouse's education and employment skills
- ☑ Any acts of adultery committed in the relationship
- ☑ Any patterns of family violence
- ☑ The property that each spouse brought to the marriage
- ☑ Whether or not one spouse acted as a homemaker in the marriage
- ☑ Whether the spouse seeking support contributed to the education or training of the other spouse
- ☑ Alimony or Spousal Support and a Disabled Spouse in Harris and Montgomery Counties in Texas
- ☑ Know How to Determine Whether Alimony will be Owed and for How Long, When Preparing for Your Texas Divorce
- ☑ 3 Important Facts about Texas Alimony and Spousal Support



TEXAS TYPES OF ALIMONY

This article addresses Spousal Support, Spousal Maintenance, and Alimony in Texas and when it is available. A good place to begin in discussing this topic is what is the difference between Spousal Support, Spousal Maintenance, and Alimony in Texas.

TEMPORARY SPOUSAL SUPPORT

Spousal Support in Texas is awarded on a temporary basis while a divorce suit is pending. It is meant to be temporary spousal support in order to provide a financially dependent spouse with income during the divorce while the parties are working on a resolution to their financial situation.

Temporary spousal support is based on the common law duty to support one's spouse during the marriage, by providing "necessaries" such as food, clothing, shelter and medical care. As a result, an award of temporary spousal support can be taken into account when the court divides the spouses' community property, since the spouse who is providing such spousal support is entitled to reimbursement from their community estate

POST-DIVORCE SPOUSAL MAINTENANCE

Post-Divorce Spousal Maintenance is a relatively new thing in Texas. Until 1997 Texas did not have any law governing spousal support. When the Texas Legislature passed the law the intent was to keep a spouse off of welfare and from becoming a ward of the state.

The Texas legislature revised this law in September of 2011 and changed some of the eligibility rules for court ordered spousal maintenance.

In Texas, spousal maintenance is money that one spouse pays to the ex-spouse for a period of time after the divorce. Post-divorce spousal maintenance is something a family law judge can order a spouse to pay involuntarily depending on if the other spouse meets certain eligibility factors under the Family Code.

DURATION OF SPOUSAL SUPPORT

Should an ex-spouse be awarded spousal maintenance there is generally a cap on how long a judge can award spousal maintenance.

Basis of Award	Length of Marriage	Maximum Duration
Married 10+ years	Between 10 and 20 Years	No more than 5 years
Married 10+ years	Between 20 and 30 Years	No more than 7 years
Married 10+ years	30 Years or more	No more than 10 years
Disabled Spouse	N/A	As long as spouse satisfies eligibility requirements

If an ex-spouse is awarded maintenance for suffering from an incapacitating disability under the family code, the court can order spousal maintenance to be paid for as long as the spouse continues to satisfy the eligibility requirements under the applicable provisions.

ALIMONY FACTORS IN TEXAS

Unless you and your spouse have resolved all issues in a divorce, your divorce will more than likely be considered "contested". If your divorce case is contested and goes to a court the Judge may order alimony if you or your spouse is seeking spousal support. The following information will help you determine what to expect regarding alimony.



IS ALIMONY IN TEXAS COMMON PLACE?

In Texas alimony is called spousal maintenance. Most cases do not involve awards of post-divorce spousal maintenance even if a party may be eligible. Spousal maintenance is at a judge's discretion and often a judge will determine that it is not appropriate.

ELIGIBILITY FOR MAINTENANCE

In Texas, a spouse may be eligible for spousal maintenance under Texas Family Code 8.051 if a spouse seeking maintenance will lack sufficient property, including the spouse's separate property, on dissolution of the marriage to provide for the spouse's minimum reasonable needs and:

1) the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence, as defined by Section 71.004, committed during the marriage against the other spouse or the other spouse's child and the offense occurred:

(A) within two years before the date on which a suit for dissolution of the marriage is filed; or

(B) while the suit is pending; or

(2) the spouse seeking maintenance:

(A) is unable to earn sufficient income to provide for the spouse's minimum reasonable needs because of an incapacitating physical or mental disability;

(B) has been married to the other spouse for 10 years or longer and lacks the ability to earn sufficient income to provide for the spouse's minimum reasonable needs; or

(C) is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability that prevents the spouse from earning sufficient income to provide for the spouse's minimum reasonable needs.

FACTORS IN DETERMINING MAINTENANCE

If a spouse meets one of the above eligibility requirements, a divorce Judge will examine a number of factors to determine whether an award of spousal maintenance would be:

- Appropriate under the circumstances
- The duration
- The amount
- And manner of payments

Texas Family Code section 8.052 sets out the factors that a divorce court will consider including:

- each spouse's ability to provide for that spouse's minimum reasonable needs independently, considering that spouse's financial resources on dissolution of the marriage;
- the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to earn sufficient income, and the availability and feasibility of that education or training;
- the duration of the marriage;
- the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;
- the effect on each spouse's ability to provide for that spouse's minimum reasonable needs while providing periodic child support payments or maintenance, if applicable;
- acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;
- the contribution by one spouse to the education, training, or increased earning power of the other spouse;
- the property brought to the marriage by either spouse



DURATION OF SPOUSAL SUPPORT

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Married 10+ years	Between 10 and 20 Years	No more than 5 years
Married 10+ years	Between 20 and 30 Years	No more than 7 years
Married 10+ years	30 Years or more	No more than 10 years
Disabled Spouse	N/A	As long as spouse satisfies eligibility requirements

A Texas Divorce Court under Texas Family Code Section 8.054(2):

Shall limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking maintenance to earn sufficient income to provide for the spouse's minimum reasonable needs, unless the ability of the spouse to provide for the spouse's minimum reasonable needs is substantially or totally diminished because of:

- physical or mental disability of the spouse seeking maintenance;
- duties as the custodian of an infant or young child of the marriage; or
- another compelling impediment to earning sufficient income to provide for the spouse's minimum reasonable

ENFORCING ALIMONY AGREEMENTS AND COURT ORDERS

Spousal maintenance, also known as alimony, is treated similarly to child support in Texas. If you are ordered to pay spousal maintenance to your spouse after your divorce is finalized and you do not do so then a judge can hold you in contempt of court. Contempt means that you failed to follow a court order. You can be fined or sent to jail as a result. However, if you are suffering through legitimate financial difficulties and can show a court that this is the case then you can request to have the spousal maintenance amount reduced or eliminated completely.

WHAT HAPPENS IF YOU AGREE TO PAY SPOUSAL SUPPORT?

Spousal maintenance is the term used in Texas for when a judge orders you to pay spousal support after the conclusion of your divorce. However, it could happen that you agree on your own to pay spousal maintenance. This situation is called contractual spousal alimony. You may negotiate with your spouse to pay her contractual spousal alimony in exchange for retaining a larger portion of the property in your community estate. Keep in mind that just because the judge doesn't order contractual alimony does not mean that he or she will not approve of its inclusion in your Final Decree of Divorce.

This sort of situation is a possibility for you if your spouse is formerly a stay at home parent, recently unemployed or is self-employed and attempting to gain a foothold in the marketplace. Spousal maintenance can be your way of ensuring that he or she stay solvent during an immediate one, five or ten year period after your divorce (or any number of years in between). Many parents need to go back to school to update their educational profile to apply for different job opportunities.

One key thing to keep in mind as we discuss contractual maintenance is that although a court can enforce an order for contractual maintenance to be paid, it cannot enforce any amount beyond what it has the authority itself to order. So, either \$5,000 per month or 20% of your gross monthly income may be enforced (whichever is less), and not a penny more. If you fail to pay the spousal maintenance and your ex-spouse files an enforcement motion against you then you can expect to go to court but cannot be held in contempt.



WHEN CAN SPOUSAL MAINTENANCE BE TERMINATED?

There are certain conditions that can arise that would allow for the termination of your duty to pay your ex-spouse spousal maintenance- be it ordered by a judge or mutually agreed to in mediation.

Simply put, if a court order that the spousal maintenance should cease (for any reason) the obligation is no more. Or, if you or your ex-spouse were to pass away then that obligation would also cease. Unless your Final Decree of Divorce states otherwise, your obligation to pay maintenance will end if your ex-spouse remarries or if a court determines that your ex-spouse has moved into a home with a person with whom he or she is in a romantic relationship with.

CAN YOU BE ORDERED TO PAY SPOUSAL MAINTENANCE ON A TEMPORARY BASIS?

Temporary spousal maintenance is a real concept in Texas. It is commonly referred to as temporary spousal support. This type of award occurs with much greater frequency than does spousal maintenance. If you are a person who earns a great deal of money then it is possible that you could be ordered to pay temporary spousal support for the duration of your divorce. This is especially likely if your spouse is not a high-income earner.

Unless you agree to pay temporary spousal support in mediation, you would need to be ordered to pay this temporary support in temporary orders hearing. The support will be ongoing until a certain date specified in the temporary orders or until the Final Decree of Divorce goes into effect.

Temporary spousal support is much more fluid and flexible arrangement that is spousal maintenance. There are fewer rules to abide by and circumstances that must be in place for it to be instituted. If a judge decides in your temporary orders hearing that your spouse does not earn enough on her own to support herself and there is no money readily available to fill in those gaps then it is probable that some degree of temporary spousal support will be ordered.

Keep in mind that temporary spousal support is relatively easy to get because the money that you would be paying to your spouse in support is technically both yours and theirs equally. The divorce has not yet occurred and the two of you are still married. Therefore, the money being paid is community property.

PROPERTY DIVISION IN A COMMUNITY PROPERTY STATE

Texas is one of a few states that have community property laws on the books. These laws are important in a divorce because there is no preference given to the spouse who has earned more money during the course of the marriage or who has contributed more-so towards the accumulation of property or assets of other types. Whether you are a brain surgeon, a cashier or a stay at home dad, you share equally with your spouse in relation to property acquired during the course of your marriage.

When you and your spouse got married, any property that you all purchased during the course of that marriage becomes Community Property. Specifically, property that you earned (like income from your jobs), acquired (through trade or purchase), or obtained in any other way during the marriage is considered to be community property. Keep in mind that while the term community property obviously leads you to think about the property itself, these concepts apply equally to debt as well. Credit cards, home equity lines of credit, car loans and the like can all be considered community property.

SEPARATE PROPERTY VERSUS COMMUNITY PROPERTY

Since we have spent a great deal of time discussing what community property is I would also like to share with you what separate property is. Property that was acquired prior to your marriage inherited property, gifted property or pain and suffering damages in a lawsuit are all considered to be the separate property of the person who owns the said property. All other property is community property. For that matter, all property is presumed to be community property under the law. It is up to you or your spouse to rebut that presumption and prove that property is either the separate property of you or your spouse.

A judge would look to when the property came into being as well as the nature of the money that was used to purchase the property in order to determine whether the property is separate or community in nature. For example, if you purchased a



house one month before you and your spouse got married then that house is separate property. It doesn't matter if your intent was to have this be your family home as soon as your marriage took place.

Another example to consider involves you inheriting a ranch during your marriage. As we just learned, this property would be considered your separate property. However, if you and your spouse contribute money earned from your jobs for the upkeep of the property your spouse likely has a reimbursement claim to pursue if you were to later get a divorce. If your community income is used to pay the mortgage on a house that is your separate property, only the amount of money that was used to reduce the principal is reimbursable.

MODIFY REDUCE OR TERMINATE ALIMONY

If you are a person who is obligated to pay your ex-spouse a certain amount of spousal maintenance for a certain amount of years, today's blog post may be of interest to you. The reason being is that we are going to discuss the circumstances and details surrounding how and why you may be able to modify or terminate outright your responsibility to pay your ex-spouse maintenance.

Let's start with the most straightforward part of our discuss. You have no obligation to pay spousal maintenance if your ex-spouse passes away. Second, your estate has no obligation to pay spousal maintenance if you pass away during the time that you are obligated to pay. Last, if your ex-spouse re-marries then your obligation to pay spousal maintenance likewise ceases. Now that we have the certainties established, let's discuss some topics that can be a little more difficult to wrap our heads around.

WHAT IF YOUR EX-SPOUSE BEGINS TO LIVE WITH ANOTHER PERSON?

So here you are- paying spousal maintenance to a person that wanted to divorce you. You may or may not have wanted the divorce. No matter what side of that issue you fall into, it is very unlikely that you wanted to pay spousal maintenance to that person. However, you have dutifully paid the maintenance as ordered because you do your best in life to follow the rules no matter how unpalatable those rules may be.

One day you find out from a mutual friend that your ex-wife has moved in with a boyfriend. This comes as news to you since you hadn't had the opportunity or desire to keep up with the goings on of your ex-spouse. Your mind immediately goes to the spousal maintenance issue. It's not fair that you should still have to pay money to your ex-spouse if she is getting helped financially by another person.

A family court in Texas can terminate your obligation to pay spousal maintenance under these circumstances. If your spouse is found by a court to have been cohabitating with their significant other on a permanent basis then that is basically all that is needed to terminate your obligation to pay spousal maintenance

HOW CAN THE OBLIGATION TO PAY SPOUSAL MAINTENANCE BE MODIFIED?

The specific amount of spousal maintenance that you are obligated to pay in your final decree of divorce can be modified or reduced. You must first file a motion to modify in court and present evidence to justify your request. A substantial change in circumstances would need to be shown by you, the moving party. You should also be aware that your ex-spouse cannot file a counter motion to increase the amount of support to be paid. Likewise, an independent motion to modify cannot be filed by her asking for an increase in spousal maintenance. The reason being is that spousal maintenance can only be modified downward and cannot be modified upward.

You would need to file your modification lawsuit and have it served upon your ex-spouse just like any other type of civil lawsuit in Texas. Notice is needed prior to a hearing on the matter. Your spouse would need to file an answer with a specific period of time. Once service has been achieved, you can proceed to a hearing where both you and your ex-spouse can present evidence as to why the spousal maintenance should either be decreased or be maintained at its current level.

The standard of evidence utilized in a Texas modification case is that you must show that a substantial change in circumstances has occurred since the last time you were in court. That change could have occurred in your life or in that of your ex-spouse. A comparison will be made by the court between your financial circumstances then and now, as well as the financial circumstances of your ex-spouse then and now.



CAN YOUR EX-SPOUSE TRY TO GET AN ORDER GRANTING HER SPOUSAL MAINTENANCE AFTER THE DIVORCE HAS OCCURRED?

This is a concern that I have run into from time to time. Basically, the question involves whether or not it is possible for an ex-spouse to go back to the divorce court in an attempt to get spousal maintenance ordered after the divorce has already occurred. Essentially, can your ex-spouse get a second bite at the apple when it comes to getting spousal maintenance ordered?

I can understand why a person would try to do so. Imagine getting a divorce and only having worked a few times off and on over the past years during the marriage. If your ex-spouse finds a job quickly but is then laid off, she may be in a desperate position. Or, even worse, your ex-spouse may suffer a physical or mental disability that prevents her from working.

Even bearing in mind these sort of scenarios, your ex-spouse cannot go back and attempt to get spousal maintenance ordered against you. Once your divorce is finalized, your ex-spouse is foreclosed from ever again asking for spousal maintenance.

HOW CAN YOU ENFORCE A SPOUSAL MAINTENANCE ORDER IN TEXAS?

Let's look at the issue of enforcing a spousal maintenance order from the perspective of the ex-spouse who is supposed to be receiving the money. Whether you and your ex-spouse agreed in mediation to pay spousal maintenance or it was ordered by the judge, a court order can be enforced that obligates your ex-spouse to pay you spousal maintenance. However, it is only when a court orders the payment of maintenance that contempt can be used as a method of enforcement. Contempt of court is when a party to a case before that court violates a court order-either in front of the judge or outside the presence of the court. There are a wide range of punishments that can be assessed in this scenario, including jail time (though it is not likely).

Some courts in Texas have ruled that even when you and your ex-spouse did agree to the payment of spousal maintenance, that contempt is a possible enforcement mechanism when a violation of the court orders occurs. To avoid any problems with how the language in the order is read, you should make sure that it is clear specific as to the responsibilities each party shares under that order in relation to spousal maintenance.

WHAT DEFENSES ARE AVAILABLE TO YOUR SPOUSE AS TO WHY SPOUSAL MAINTENANCE WAS NOT PAID?

There are circumstances that may exist in your spouse's life that will actually work out to act as defenses on their behalf as to why he or she is not current in their paying you spousal maintenance. The most straightforward of those defenses is that your ex-spouse just lacked the ability to pay spousal maintenance as frequently and as much as is ordered in the final decree of divorce. Losing a job, getting sick or disabled or any range of circumstances could relate to this defense.

If you do not have income from a job, then a court would look to see if you have sufficient property that you own that could be converted into cash. It is probable that the judge in your case looked at this factor back when the order was first instituted. However, people's lives change over the years and a second look may be justified.

Finally, the court will look to see whether or not you attempted to obtain a loan to pay the spousal maintenance. If you were unsuccessful it could be because you did not know of any place where you could have borrowed the money from, or you were not able to borrow the money for whatever reason.

You need to present evidence in order to back up the assertion that your ex-spouse was justified in their not paying the spousal maintenance. It is insufficient to throw out one of the above defenses and leave it to your ex-spouse to present evidence about why those defenses are invalid.



WHY IS ALIMONY NO LONGER DEDUCTIBLE?

When Congress passed the Tax Cuts and Jobs Act of late 2017, the reforms that were made in the tax code as it relates to alimony have changed how people going through divorce approach this topic. The tax law took effect on January 1, 2018 and has changed the tax brackets for those of you who have filed as head of household. Importantly it has also eliminated the deductions that a person could apply for attorney's fees, court costs, financial planners as well as for alimony payments made to an ex-spouse.

For alimony purposes, the tax law mandated that for all final decrees of divorce signed after December 31, 2018 then the deduction for alimony will no longer be allowed. It has been argued by some that these changes have the potential to have a dramatic effect on you and any other people who plan on getting divorced in the future. I would point your attention towards any premarital or marital property agreements that you and your spouse have signed which cover spousal maintenance or contractual alimony. The reason I do so is because those agreements may need to be altered or amended in consideration of the changes made to the tax laws that went into effect in 2018.

WHEN CAN YOU FILE ON YOUR TAXES AS HEAD OF HOUSEHOLD?

If you are unmarried on the final day of a calendar year you can file as head of household on your taxes. For example, if you filed for divorce earlier this year in 2020 and it has dragged on for longer than you would like it is still possible to file as head of household on your taxes if you get your divorced by December 31, 2020.

Next, your home has to be the main home where your children lived during the year. Your kids couldn't have lived most the year with your mother, for example, and still allow you to file as head of household on your taxes. Your kids needed to be in with you at your home for at least 50% of the days of 2020 in the above hypothetical situation.

Third, you had to have paid most of the costs maintaining the house for at least half of the year. Rent payments, the mortgage, taxes, insurance, utilities and food are all costs that go into this analysis. For most single parents this will not be a problem. Even if you receive child support payments, the reality is that those monies are usually quite modest in comparison to the actual costs of raising a child on a daily basis.

Prior to 2018, if you were able to file your taxes as the head of household then you would be eligible to take advantage of a lower tax bracket compared to merely filing as a single person. Single parents who have primary custody of kids bear a significant burden to their budgets despite receiving child support. When you consider that for two kids, 25% of your ex-spouse's net monthly income is all that you would be paid in support in most cases, that is not a lot in terms of financial help.

This is fine for most parents who wanted to become the primary conservators of their kids. When you think about it, you didn't push for that right in your divorce just so you could potentially have an advantageous tax filing position. Rather, you believed that the kids' best interests were met better by you caring for the kids primarily than is your spouse. Any tax advantages were at best a secondary consideration that you probably made.

The reality is that as of a couple years ago the new tax law took away the tax treatment that you could take advantage of as filing head of household. If you itemize your deductions the best you can do is to deduct around \$1,500 per year. Prior to the most recent changes in the tax code your benefit as filing head of household would have been closer to \$5,000.

STANDARD DEDUCTIONS GO UP FOR PARENTS WHO FILE AS HEAD OF HOUSEHOLD

The standard deduction has increased for parents who wish to file as head of household, however. Previously the standard deduction for parents in this position was \$12,000. Now it stands at a beefier \$18,000. As I just mentioned, however, if you are one of the few people who actually itemize their tax deductions in a given year this benefit will be meaningless to you. Single parents with primary custody of their kids like you is that in 2026 the head of household status for tax bracket will go back to the way that it was formerly.



A HYPOTHETICAL EXAMPLE TO EXPLAIN THE POINTS WE HAVE MADE THUS FAR REGARDING THE STANDARD DEDUCTION

Talking about taxes, alimony and changes in federal law can be a little confusing. I don't want us to go any further discussing this subject until we take a break and go over a little hypothetical example in order to better illustrate the points that I have been trying to make thus far.

Suppose that you and your husband have three children together and are now getting a divorce. You are a teacher at the local high school and your husband works for a national airline. It would make sense, therefore that you be the parent who is named as the primary conservator of your kids. The reason why it makes sense is that your husband travels a great deal of the time for work and is home in Houston only on the weekends.

As far as your incomes are concerned, both of you earn about the same amount of money on a yearly basis- right at \$100,000 after deductions. The deductions that you typically take are for mortgage interest payments on your \$200,000 loan and around \$1,000 for charitable donations made to the church and other nonprofits. Your tax bracket as a single individual will be 24%, as will your husband.

What happens if you want to file as head of household on your taxes moving forward since you will be the primary caretaker of the children? The reality is that for your situation, bearing in mind your income, only the first \$51,000 or so of your income will be impacted. So, the reality is that your financial situation may somewhat different now than had your divorce been finalized prior to December 31, 2018

WHAT ABOUT ALIMONY DEDUCTIONS?

As opposed to child support payments, spousal maintenance and contractual alimony (as they are known in Texas) are typically tax deductible for the ex-spouse who makes the payments. This means that if you were the spouse ordered to make spousal maintenance payments in your final decree of divorce that you do not need to itemize your deduction in order to be a beneficiary of these tax advantages.

The alimony is taxable in the year where the money is actually received by your ex-spouse. Here, I need to point out that the federal tax laws treat spousal maintenance, contractual alimony, spousal support different. Sometimes you may hear attorneys and even judges refer to these concepts like they are the same thing. In some instances they may be substituted for one another if you are having a general discussion on this topic. However, in this instance we need to differentiate between them before we can go any further.

Spousal maintenance does not always qualify for the deduction, however. Just so we are clear: in Texas, spousal maintenance is payments ordered by a judge to be received by your ex-spouse as paid by you after your divorce has been finalized. These payments can be ordered for a number of reasons, but the bottom line is that your ex-spouse must have been found to be unable to meet her minimum reasonable needs without the assistance of these maintenance payments.

The spousal maintenance payments must have been ordered by a judge to be eligible. Next, the payments must be made in cash and not in property or something else. You cannot still reside with your ex-spouse in the same household (you must have your own household to maintain, basically). Finally, the divorce decree must not state that the payments of spousal maintenance are to satisfy any other purpose than supporting your ex-spouse financially.

That was how things were in the old days. Now, as long as your divorce was finalized after December 31, 2018, that deduction for spousal maintenance is no longer available to you. As we talked about at the very beginning of today's blog post this could throw premarital and marital property agreements into turmoil if they were signed before December 31, 2018 but the divorce would not become final until after that date.

These spousal maintenance payments are in jeopardy of not qualifying for the alimony deduction if your divorce was finalized after 12/31/18. This is true even if your marital or premarital property agreement was signed well before this date. You should take a look at your premarital or marital property agreements if you are not yet divorced and make changes as you and your attorney see fit.



HOW IS ALIMONY TAXED?

When you hear the word “alimony” I’m willing to bet that you know, generally speaking, what that word means. In general, alimony refers to payments from one spouse to another after their divorce. More specifically, the payments would go from one ex-spouse to the other- given that their divorce has been finalized and they are no longer married. These payments can occur during the course of their divorce and often times continue after the divorce, as well.

How alimony is treated as far as a taxable event depends upon whether or not the alimony payments qualify as meeting their definition of alimony. If the definition under the IRS rules are met, your alimony payments are tax deductible as the payor of the money. Your ex-spouse would have to pay taxes on the alimony received as ordinary income. At least, that WAS the rule for a long, long time. More on that in a moment.

Depending upon the nature of your divorce case you may need to consult with a financial planner or another professional in that space to see how to best structure your divorce settlement. The downside to not structuring your settlement correctly is that you could end up having to pay taxes and penalties where you may not have needed to.

The basics of alimony in Texas is that there are two types: spousal maintenance (which is ordered by a judge) and contractual alimony (which is decided up in divorce settlement negotiations). As I mentioned a moment ago, not all payments from you to your ex-spouse will actually count as alimony under IRS rules.

Child support does not count as alimony- either during the divorce case or afterwards. Payments made out of your community estate division do not count as alimony either and are likewise not taxable. If you have agreed in your divorce settlement to pay money towards the upkeep of a home that is owned by you and your spouse then some of those payments may count as alimony depending on your specific circumstances.

For instance, you are ordered to pay all of the mortgage payments on a home that was a part of your community estate, you may be able to deduct half of those payments as alimony on your taxes. You may even be able to deduct half of the interest payments on that mortgage if you itemize your deductions rather than choose the standard deduction.

CHANGES TO THE LAWS ON ALIMONY AND TAXES CAN COMPLICATE MATTERS SOME

If you and your spouse are going through a divorce then you need to be aware that the federal government has just made divorcing a little more complex as far as taxes are concerned. For nearly a century, the federal law regarding alimony payments stated that such payments are deductible from your income and are taxable as ordinary income for your ex-spouse who receives those payments.

If you and your ex-spouse have a large gap in your incomes (if you earn a lot of money and she earns relatively little, for example) this is something that is agreeable for all the parties involved. Suppose that you are a doctor who earns \$350,000 per year. This puts you in a higher income tax bracket as an individual than your spouse who works part time. When you all get divorced, in the event that you were ordered to pay spousal maintenance to your spouse, you would be able to deduct those payments from your income. Your ex-spouse would have to report that maintenance as income at a lower tax rate than you would have had to pay on the money had it been taxable at your tax rate.

Therefore, the maintenance dollars are more valuable to your spouse they are for you- at least when we discuss this issue from a tax perspective. You would be smart to pay the maintenance as requested in this scenario because you have a small benefit to doing so (other than honoring the divorce agreement). Your ex-spouse benefits, you get to deduct the payments and the government doesn’t get the full benefit of your income. However, there have been changes set into motion in recent years that changes all of this.

HOW CAN ALL OF THIS INFORMATION BE SUMMED UP?

If you were divorced prior to January 1, 2019 then the way that your alimony, spousal maintenance or spousal support payments are taxed will not change. If you have a divorce that was finalized before 2019 and you attempt to come back and modify that award in some way, you then open yourself up to submitting to the changes in the tax laws that we have spent some time discussing today. Finally, even if your divorce was filed in 2018 but is still pending to this day your divorce will be subject to the tax law changes. It doesn’t matter that you filed your divorce prior to January 1, 2019.



CONSIDER THIS HYPOTHETICAL EXAMPLE AS IT RELATES TO SPOUSAL MAINTENANCE

Let's assume that you and your spouse were married for twenty years before a divorce was filed. Your children are over the age of 18 and are no longer living with you at home. As in many houses, you have been working for the duration of your marriage and your spouse has been a stay at home wife and mother. She has never worked outside the home during your marriage.

What can your spouse do now that you have filed for divorce? Is she going to be left up the creek with a paddle- financially speaking? Spousal maintenance or contractual alimony would act as a bridge for her to get from your married life to a financially viable existence as a single adult. There will understandably need to be some transition time for her as she attempts to gain her footing- finding a job, a place to live, learning how to live on a budget, etc. Spousal maintenance or contractual alimony will allow her to withstand some growing pains while staying afloat financially.

The situation that your wife is in, as stated previously, is not unique. Many women either leave the workforce or never enter into it in order to raise a family. This is a great lifestyle for those women who choose to undertake this responsibility. However, in the event of divorce it can leave a spouse in this position very vulnerable.

The spouse who is in your position, the wage earner/bread winner, not only consented to this arrangement, but benefited from it as well. It is nice to have a spouse at home raising the family and minding domestic matters from a peace of mind perspective. Being involved in a hectic work environment is much more tolerable when you know that your children and your home are well cared for in your absence.

WHAT TO DO IN ORDER TO NEGOTIATE WELL IN REGARD TO SPOUSAL MAINTENANCE AND CONTRACTUAL ALIMONY

This is an important subject all the way around. If you are the spouse who needs the alimony to survive, you cannot negotiate poorly. Most divorces do not see the inside of a courtroom. This means that if you are to receive post-divorce financial support then it is likely that you will do so in the form of contractual alimony. Being able to negotiate well about this crucial subject could mean the difference between financial peace of mind and scrambling to survive.

On the other hand, if you are the spouse who will be paying spousal maintenance then you need to make sure that you are getting a fair deal. While there are limits to what a judge can order you to pay in maintenance, contractual alimony does not abide by those rules. To ensure that your spouse is not taking you to the cleaners you are well advised to have an experienced family law attorney by your side during negotiations.

**QUESTIONS ABOUT CONTRACTUAL ALIMONY OR DIVORCE?
CONTACT THE LAW OFFICE OF BRYAN FAGAN**

If you have any questions about the material presented to you in today's blog post please do not hesitate to contact the Law Office of Bryan Fagan. Our licensed family law attorneys offer free of charge consultations six days a week here in our office. These consultations are a great opportunity for you to ask questions and receive direct feedback about your particular circumstances. Thank you for the opportunity to serve you and your family in the future.





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