

What is Spousal Maintenance?

Note: This guide is intended to provide general legal advice regarding spousal maintenance in a divorce in Idaho. If you need specific legal advice regarding your situation, please contact an attorney.

For an explanation of the identification and division of community property in a divorce, please see our What is Community Property? Guide on our website: [What is Community Property? Guide](#).

What is Spousal Maintenance?

Spousal maintenance is financial support from one spouse to their former spouse. One spouse can request spousal maintenance from their spouse in a divorce or legal separation. Spousal maintenance is also called spousal support or alimony. It may be awarded to a spouse for different lengths of time and different amounts based on the circumstances of each case.

Generally, When Will a Court Grant Spousal Maintenance?

When the spouse seeking spousal maintenance can prove that he/she/they lack(s) sufficient property and income to provide for their *reasonable needs* and is unable to support themselves through employment.

Note: Courts do not award spousal maintenance in every divorce case but only those cases which meet the above criteria.

What Does "Reasonable Needs" of a Spouse Mean?

In Idaho, a spouse's "reasonable needs" are based on the quality of life established during the marriage. See *Stewart v. Stewart*, 143 Idaho 673, 679, 152 P.3d 544, 550 (2007).

The reasonable needs cannot be based on a quality of life established before the marriage. The only exception to this is where reasonable needs that were established before the marriage are *continually established during the marriage*.

How Long Can Spousal Support Last?

It depends on the facts in each case. Spousal maintenance doesn't need to be "rehabilitative" only. In other words, a spousal maintenance award doesn't have to expire once the spouse awarded maintenance is able to sufficiently support themselves on their own.

Keep in Mind

These factors are considered by the court but spousal maintenance is not a right. In other words, the court is not required to award either party spousal maintenance.

Do I Have to Apply for Jobs or Find Other Income Before I Can Get Spousal Maintenance?

Not necessarily, but it may help to show that you are not able to support yourself through employment. There is no requirement that you "exhaust all your resources", or try everything you can to support yourself, before an award of spousal maintenance is made by a court.

What Factors Will the Court Consider When Deciding Whether to Grant a Spouse an Award of Spousal Maintenance?

The court will consider:

- Financial resources of the spouse seeking maintenance, including marital property that spouse was given in the divorce, and that spouse's ability to meet their needs independently;
- The time necessary for the spouse to acquire sufficient training or education that would enable the spouse to find employment;
- The duration of the marriage;
- The age, physical, and mental condition of the spouse seeking maintenance;
- The ability of the spouse who maintenance is sought from to meet their own needs while making spousal maintenance payments;
- The tax consequences of each spouse; and,
- The fault of the other party.

The court will also keep an "eye to the future" when they consider an award of spousal maintenance. Meaning, they will factor in a speculated change in circumstances if there is substantial and competent evidence that change in circumstances will occur.

Brazier v. Brazier, 726 P.2d 1143

What If I Want to Change or Modify My Current Award of Spousal Maintenance?

A court can either include a future modification in the divorce decree or a spouse seeking a modification in their spousal support payments can do so by filing a petition or motion to modify spousal maintenance.

In order to modify a divorce decree, the person seeking to modify the decree will need to show that a permanent, substantial, and material change of circumstances exists that justifies revisiting the spousal maintenance award. See [Idaho Code Section 32-709](#).

If Ordered, When Does a Modification to Spousal Support Take Effect?

The modification of the spousal maintenance amount, if awarded, will only affect the payment amount *after* the motion or petition has been filed or at another time determined by the court.

Note: A modification of spousal maintenance will *not* affect any previous payments of spousal maintenance.

What Kind of “Substantial and Material Change of Circumstances” Would Justify Changing a Spousal Maintenance Award?

Possible substantial and material change of circumstances that may justify changing a spousal maintenance award could include, but are not limited to:

- Remarriage of the spouse receiving payments;
- New adequate employment of the spouse receiving payments; and/or
- Unreasonable use of spousal maintenance payments.

Note: Inflation, cost-of-living increases, or devaluation of dollar are not sufficient by themselves to warrant a modification without also considering the parties' relative needs and abilities.

What May Be Considered “Unreasonable Use” of Spousal Maintenance Payments?

This will vary from case to case, but in one case, the court awarded a modification of spousal maintenance where the recipient of the spousal maintenance was gambling and engaging in other behavior which amounted to “squandering” the payments.

Daniels v. Daniels, 351 P.2d 236 (Idaho 1960).

How Do I Ask the Court for Spousal Maintenance in My Divorce?

You must ask for an award of spousal maintenance in your Petition for Divorce if you are the person filing for divorce or you must ask for it in your Response and Counterclaim for Divorce if you are the person responding to a divorce. If you do not ask the court for spousal maintenance in your first filing with the court, the court will likely not consider it at all.

How to File for or Respond to a Divorce

Visit the Court Assistance Office website for fillable forms for a Petition for Divorce or a Response and Counterclaim for Divorce:

<https://courtsselfhelp.idaho.gov/Forms/Divorce>

Note: If you are requesting spousal maintenance, you will have to write in or type in your request for an award of spousal maintenance because the forms do not automatically include this request.

You may also visit your local courthouse to pick up these forms.

How Do I File to Modify Spousal Maintenance After My Divorce Decree Has Been Entered?

Many spousal support awards are not modifiable once they are ordered by the court.

However, if your spousal support award is modifiable and if a substantial and material change of circumstances has occurred since the spousal maintenance order was entered, you can use the Court Assistance Office forms to Modify an Order, Judgment, or Decree to request a change in spousal support: [Petition to Modify an Order, Judgment, or Decree](#).

Unmarried Couples and Maintenance or Property Issues

If you are in an unmarried partnership, it is unlikely that you would be able to receive spousal maintenance upon separation with your significant other.

- However, if you have questions about your rights related to dividing real property upon separation of an unmarried partnership, please see our guide on [Real Property Interests Between Unmarried Couples](#).

Attorney Services

Determining whether you may have an argument for spousal maintenance in a divorce is a difficult and complicated matter. If you have specific questions related to spousal maintenance, please seek legal advice or assistance from an attorney.

You may represent yourself or hire an attorney for your divorce case. If you need help finding an attorney, please contact the following organizations:

- [Idaho Legal Aid Services](#)
- [Idaho Volunteer Lawyers Program](#)
- [Idaho State Bar Association Attorney Referral Service](#)