



Region Legal Service Office, Mid Atlantic Legal Assistance Department

Spousal Support

- 1. Summary:** A spousal support order directs payment from a one spouse to another spouse or to a former spouse. Spousal support laws vary significantly from state to state with some states providing formulas and other states only providing general factors for the court to consider. Note that spousal support is gender neutral and either spouse may have an obligation to provide support to the other.
- 2. Types of Spousal Support under the Virginia Code:** While divorce is pending, a court may award “pendent lite” spousal support which is designed to be temporary until the issue of spousal support is resolved during the divorce proceedings. After the dissolution of the marriage, a court may also award permanent spousal support. Permanent support can last indefinitely, can be time limited, can last until a specified event occurs (e.g., remarriage of the supported spouse), or can be paid in a lump sum.
- 3. Virginia uses a formula to calculate a presumptive amount of “pendent lite” support:**
 - If parties have minor children in common, the presumptive amount is the difference between 28% of the payor spouse's monthly gross income and 58% of the payee spouse's monthly gross income. For example, if the payor (the person making payments) makes \$4,000 per month, and the payee (the person receiving payments) makes \$1,000 per month, then the payor owes the payee \$540 per month. See the calculation below:
$$((\$4000 * 28\%) - (\$1000 * 58\%)) = \$1120 - \$580 = \$540$$
 - If the parties have no minor children in common, the presumptive amount is the difference between 30% of the payor spouse's monthly gross income and 50% of the payee spouse's monthly gross income.
 - Note that these calculations only apply when the combined monthly of both parties is less than \$10,000.
- 4. Permanent spousal support factors:** VA. CODE ANN. § 20-107.1(E) provides a list of factors to consider in awarding permanent spousal support. In cases of short marriages, under five (5) years, permanent support will rarely be awarded. Factors include:
 - Obligations, needs and financial resources of each party;
 - Standard of living established during the marriage;
 - Duration of the marriage;
 - Age and physical and mental condition of the parties;
 - Contributions, monetary and nonmonetary, of each party to the well-being of the family;
 - Property interests of the parties, real and personal, tangible and intangible;
 - Earning capacity, including the skills, education, and training of the parties and the present employment opportunities for persons possessing such earning capacity;
 - The opportunity for, ability of, and the time and costs involved for a party to acquire the appropriate education, training and employment to obtain the skills needed to enhance his or her earning ability; and,
 - The decisions regarding employment, career, economics, education and parenting arrangements made by the parties during the marriage and their effect on present and future earning potential.
- 5. What to bring to court:** The court will consider the current income or opportunity for income for the requesting spouse and the living expenses **necessary** for that spouse to survive. Bring evidence of these issues to the court. To prove income, consider income statements, tax returns, and Leave and Earnings Statements. To prove expenses, consider utility bills, grocery bills, gas bills, leases, and other such documents. Also consider bringing bank statements as these may reflect the flow of income and expenses. Individual decisions not to work, to pursue an education, or to have reduced employment will not be favorably reviewed by the court. Extravagant expenditures for food, entertainment, or other items will not help the case for support. Non-monetary negative contributions (acts that do not reflect the use of money but negatively impact the marriage) like adultery, abuse, and abandonment may be considered by the court.
- 6. Importance of obtaining court order regarding spousal support:** The best place to obtain long term resolution to a support issue is in court. While an agreement between the parties is a good first step to take, it is better to have the court enter an order concerning spousal support because the court order makes the agreement harder to change and easier to enforce.

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