

## New York Divorce and Family Law Blog

### [New York's Temporary Maintenance Law: Did the New Law Create More Problems Than It Solved?](#)

Posted by [Daniel Clement](#) on October 14, 2010

The [new temporary maintenance](#) law became effective in New York on October 12, 2010. The new law provides a fixed formula for awarding temporary maintenance (in New York alimony is termed “maintenance”).

The formula provides that temporary maintenance should be the lesser of:

- 1) Thirty percent of the higher-earning spouse’s income, minus 20 percent of the lower-earning spouse’s income.
- 2) Forty percent of their combined income, minus the lower-earning spouse’s income.

Until the enactment of this law, judges had discretion to set temporary awards based upon the actual needs of the parties. Temporary maintenance was awarded to enable the economically dependent spouse to maintain the marital lifestyle during the divorce action. The awards were often inconsistent and lacked predictability.

The new formalistic approach brings consistency and predictability, but at what cost?

First, the statute does not take into account the length of the marriage. It treats a long term marriage of 25 years the same as one that ended when the honeymoon was over. A spouse could potentially receive a substantial sum of temporary support having been married a very brief period of time. .

Second, since the law applies to the first \$500,000 of income, the spouse of a high earner may actually be forced to live in a lesser lifestyle. Under the prior law, the full income would be used for determining temporary maintenance. Imagine, the spouse of a CEO, a Wall Street executive, a rock star or a ball player, who lived a lifestyle commensurate with their multi million dollar income, having to do with support based on a cap of \$500,000.

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Third, temporary awards create expectations. From a litigant's view, why should I settle the case for less maintenance than I am receiving on a temporary basis? And related to that, if I am going to receive less maintenance when the divorce is over, why not drag out the case so I receive more temporary maintenance?

Time will tell if these concerns will be borne out. The law is already being revised.