



## Making Modifications to Maintenance (Spousal Support) Obligations in Colorado.

If there is one constant in life, it is that life always changes. Layoffs, retirement, career changes, remarriage, changes with an aging parent, or illness—all of these can have an impact on how you live your life—and how you manage your financial obligations. For divorced couples and parents, these changes are further complicated because of maintenance or spousal support obligations.

We work frequently with people who need to reduce their maintenance payments. We also work with people who need to seek an increase in the maintenance they receive. The need to change these payments stems from job loss, career change, remarriage, caring for an aging parent or the fact that the children from the marriage have gotten older. Maintenance modifications are as much a fact of life as constant change.

### Maintenance Defined

In Colorado, maintenance refers to spousal support which used to be called alimony. Spousal support or maintenance is usually involved in a case that involves a long-term marriage or a case where one spouse has been able to make significantly more than the other, as in the case of a stay-at-home parent.

Whether or not one is entitled to maintenance initially is governed under §14-10-114 of the Colorado Revised Statutes. An initial award of maintenance is not always required in a divorce, and a determination of entitlement (amount and duration) is case specific. When maintenance is awarded or agreed upon as part of a divorce, all terms regarding the amount and duration are specified.

### Substantial and Continuing Change

According to §14-10-122 of the Colorado Revised Statutes (C.R.S.), maintenance is modifiable only if there has been a substantial and continuing change. However, you should be aware that if you and your spouse or former spouse entered into an agreement regarding the payment of maintenance, whether or maintenance is modifiable will be determined solely on the provisions of that agreement, regardless of whether or not there has been a substantial and continuing change.

So, for example, if your agreement specifically states that “maintenance is contractual and non-modifiable” the Court will not have jurisdiction to modify maintenance even if something has changed in your life. Even if you are not bound by an agreement, the courts may not consider the change in your life to be a “continuing” change and may decline to modify maintenance. From the court’s perspective, some life obstacles are bumps in the road that are only temporary, such as lack of employment, as your finances will (hopefully) revert back to levels similar to when you negotiated you maintenance agreement.

For the court to approve a maintenance modification, you must be able to prove that the change to your financial situation is not only significant but ongoing. While temporary unemployment is not considered ongoing, income loss from a disability often is.

### Taking the First Steps

The first step is to determine whether your maintenance can be modified. In some divorces, the maintenance obligation cannot be modified. If the maintenance obligation can be changed, you need to determine whether there has been a substantial change that would support a change.

So what should you do if your finances *have* changed substantially and you can no longer meet your maintenance responsibilities?

- **Collect the right information.** When you apply for modification, you will need to complete a current Sworn Financial Statement, just as you did during the divorce process. Some information that will be helpful to you while completing this statement include:
  - Tax returns from the past three years
  - W-2 or 1099s from last year
  - Current paystub
- **Refer back to your original divorce agreements.** As mentioned earlier, in some divorces, the couple agrees during the divorce process that all maintenance obligations

are unchangeable. One of your very first steps should be to understand what you originally agreed to. You should speak to an attorney for legal advice.

- **If you have already missed payments, pay back as much as possible as soon as possible—even if it is not the full amount.** Try to demonstrate to the courts that you are making an effort to catch up on your payments, even while seeking a better maintenance agreement. If you make no payments, you may be considered uncooperative, which may reflect poorly on you during the modification process.
- **Seek legal advice.** Some maintenance agreements may not be modified, but in many cases if you can prove that your financial situation has drastically changed, it may be feasible. An attorney will be able to clarify your options. If you are worried about the price, consider an attorney that offers “ala carte” services or even brief consultations. Also, because maintenance is not decided based on a formula, legal representation can help you maneuver the sticky, subjective areas in the law. The most important thing you can do is to act immediately and not wait. Modifications can only be applied back to the date that you file with the court requesting a modification of maintenance. Courts may also look at the length of time that you waited to address the issue as part of determining whether or not the change is substantial. The longer you wait, the less effective your argument becomes that your life change was substantial.

### Conclusion

Changes are going to happen in life, and when those changes affect whether or not you can continue to make your maintenance support payments, it is vital to understand what your rights and responsibilities are and to clarify all options. You will only have an opportunity at being successfully in modifying maintenance if you can prove that your situation has changed drastically and that the change is ongoing—such as being laid off because of an injury or illness or retirement—so you need to know exactly where you stand.

Contact Glen B. Goldman, Esq., for more information.

[www.Divorce-Matters.com](http://www.Divorce-Matters.com)

303-414-5442