

Ending Maintenance Payments

Maintenance can go on forever – at least until one former spouse dies; or it may be terminated either by the occurrence of some agreed-on specified event (a consideration spelled out in Illinois law), or merely the passage of time. Most divorce agreements and judgments specify when maintenance will terminate. If your agreement or judgment is silent on the issue, Illinois' divorce law¹ lays out certain circumstances when maintenance terminates – specifically, on death (of either party) or the remarriage or cohabitation² of the party receiving payments.

Termination; Cohabitation: When the (former) spouse receiving maintenance takes up residence with another, the continuation of the maintenance payments may be put in jeopardy. The cohabitation must be on a continuing, conjugal basis.³ Proving the “continuing” part of the relationship is relatively easy. Proving that a relationship is “conjugal” in nature, though involved, is far from impossible.⁴ “Conjugal” does not mean “sexual.” Maintenance may be terminated even where there is no sexual relationship but, in all other respects, the relationship is conjugal.⁵ Indeed, a same-sex relationship where there is no sex -- just roommates -- can satisfy the “resident, continuing, conjugal relationship” requirement.⁶

The cohabitation need not take place AFTER the divorce, either. If a spouse cohabits with another person on a continuing, conjugal, basis while the divorce case is still going on – even before the final judgment is entered – that spouse may be barred from receiving maintenance. This can be true even if the spouse ends the cohabitation prior to the conclusion of the case.⁷

Depending on the county in which you were divorced, maintenance may be terminated without even having to go to court. Some counties require a judge to consider the facts and rule on whether a maintenance recipient is involved in a continuing, conjugal relationship.⁸ In other counties,⁹ the party paying maintenance can make the determination without having to go to court – he or she can simply say “you’re in a continuing, conjugal relationship, so I’m terminating the maintenance payments.”

Termination; Change of Circumstances: A termination of maintenance may also be sought based on a change in circumstances. In one case, a 58 year-old former wife was receiving maintenance when she won a \$3.7 million injury settlement. The former husband used this “substantial change in circumstances” to argue for a termination of maintenance.¹⁰

Termination; By Agreement: It is not unusual for divorcing spouses to agree that maintenance will continue only until the recipient is financially secure: when he or she starts earning a sufficient income, receives an expected inheritance, reaches retirement age and can then access retirement funds without penalty, or as long as the recipient lives in a specific residence or within a certain geographical area.

You have to be careful about how you phrase your agreement about when maintenance may terminate. Several cases show the financial disasters people can bring upon themselves with sloppy wording regarding the anticipated cessation of maintenance.¹¹ Those disasters extend beyond divorce law and can impact both parties' tax returns for years – or decades – to come.¹² Consider the plight of one Illinois man who agreed to pay his wife maintenance.¹³ Sloppy wording in the agreement left the termination trigger undefined. To the Illinois courts it looked like maintenance, to the IRS, it looked like a property settlement (meaning no tax ramifications). In the end, the ex-husband had to continue to make the payments to his ex-wife, but he didn't get the tax write-offs and she didn't have to pay taxes on the payments. So be sure to work with a knowledgeable and experienced attorney to avoid the pitfalls.