
- Modification of Maintenance and Child Support FAQ's -

- 1. In my judgment of divorce I was ordered to pay maintenance that I can no longer afford to pay! What can I do?**

The Supreme Court and usually the Family Court may modify downward the maintenance provisions of a divorce judgment upon application.

A court ordered provision for maintenance in a divorce judgment made after July 19, 1980, may be modified downwards (or upwards) upon a showing of the recipients inability to be self-supporting or a substantial change of circumstances, including financial hardship. This modification power also exists where an agreement has been incorporated into an order or dissolution judgment and merges into it and ceases to exist as a separate agreement.

- 2. Can the court reduce or eliminate my arrears of maintenance?**

Any arrears which have accrued under a judgment or order prior to the making of an application for modification are not subject to modification or annulment unless the defaulting party shows good cause for failure to move for relief from the order directing payment prior to the accrual of the arrears.

- 3. I signed a settlement agreement which requires me to pay maintenance and it was incorporated in and survived my judgment of divorce. What can I do if I can no longer afford to pay?**

The Supreme Court and usually the Family Court may modify the maintenance provisions of a divorce judgment made on or after July 19, 1980 upwards or downwards, where there is a surviving agreement which continues to exist as a separate agreement after the divorce judgment is made. The modified judgment supersedes the terms of the prior agreement and judgment for such period of time and under such circumstances as the Court determines. The criteria upon which such modification may be ordered is "extreme hardship on either party."

- 4. Is It easy to prove "extreme hardship?"**

No - Its very difficult.

- 5. In my divorce judgment I was ordered to pay child support that I can no longer afford to pay. What can I do?**

A court ordered provision for child support in a divorce judgment made on or after July 19, 1980, may be modified downward or upward, by the Supreme Court, and usually by the Family Court, except as arrears and sums reduced to judgment, upon showing a substantial change in circumstances, including financial hardship. In addition, the court may modify either upwards or downwards a judgment as to child support upon a showing of the recipient's inability to be self supporting. This modification power also exists where an agreement has been incorporated into an order or divorce judgment and merges into it and ceases to exist as a separate agreement.

- 6. I signed a settlement agreement which requires me to pay child support and it was incorporated in and survived my judgment of divorce. What can I do if I can no longer afford to pay?**

Where a separation agreement or stipulation is incorporated in and survives a judgment of divorce and continues to exist as a separate agreement after the divorce judgment is made the Court cannot reallocate the child support obligations between the parents where the agreement is fair when entered into, unless there is an unanticipated and unreasonable change in circumstances resulting in a concomitant showing of need. However, where the child's right to receive adequate support is shown, the Court may increase the amount of child support.

- 7. Can the court reduce or eliminate my arrears of child support?**

Any arrears which have accrued under a judgment or order prior to the making of an application for modification are not subject to modification or annulment.