

7266--A

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I N S E N A T E

May 8, 2014

Introduced by Sens. BONACIC, HASSELL-THOMPSON, PARKER, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the domestic relations law, in relation to the duration and amount of maintenance; and to amend the family court act, in relation to spousal support

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 5-a of part B of section 236 of the domestic
2 relations law, as added by chapter 371 of the laws of 2010, is amended
3 to read as follows:
4 5-a. Temporary maintenance awards. a. Except where the parties have
5 entered into an agreement pursuant to subdivision three of this part
6 providing for maintenance, in any matrimonial action the court shall
7 make its award for temporary maintenance pursuant to the provisions of
8 this subdivision.
9 b. For purposes of this subdivision, the following definitions shall
10 be used:
11 (1) "Payor" shall mean the spouse with the higher income.
12 (2) "Payee" shall mean the spouse with the lower income.
13 (3) "Length of marriage" shall mean the period from the date of
14 marriage until the date of commencement of action.
15 (4) "Income" shall mean[:
16 (a)] income as defined in the child support standards act and codified
17 in section two hundred forty of this article and section four hundred
18 thirteen of the family court act[; and
19 (b) income from income producing property to be distributed pursuant
20 to subdivision five of this part].
21 (5) "Income cap" shall mean up to and including [five] TWO hundred
22 thousand dollars of the payor's annual income; provided, however, begin-
23 ning January thirty-first, two thousand [twelve] SIXTEEN and every two

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 years thereafter, the [payor's annual] income CAP amount shall increase
2 by the [product] SUM of the average annual percentage changes in the
3 consumer price index for all urban consumers (CPI-U) as published by the
4 United States department of labor bureau of labor statistics for the
5 PRIOR two [year period] YEARS MULTIPLIED BY THE CURRENT PAYOR'S ANNUAL
6 INCOME AMOUNT AND THEN rounded to the nearest one thousand dollars. The
7 office of court administration shall determine and publish the income
8 cap.

9 (6) "Guideline amount of temporary maintenance" shall mean the [sum]
10 DOLLAR AMOUNT derived by the application of paragraph c OR D of this
11 subdivision.

12 (7) ["Guideline duration" shall mean the durational period determined
13 by the application of paragraph d of this subdivision.

14 (8) "Presumptive award" shall mean the guideline amount of the tempo-
15 rary maintenance award for the guideline duration prior to the court's
16 application of any adjustment factors as provided in subparagraph one of
17 paragraph e of this subdivision.

18 (9)] "Self-support reserve" shall mean the self-support reserve as
19 defined in the child support standards act and codified in section two
20 hundred forty of this article and section four hundred thirteen of the
21 family court act.

22 c. [The court shall determine the guideline amount of temporary main-
23 tenance in accordance with the provisions of this paragraph after deter-
24 mining the income of the parties:

25 (1) Where the payor's income is up to and including the income cap:

26 (a) the court shall subtract twenty percent of the income of the payee
27 from thirty percent of the income up to the income cap of the payor.

28 (b) the court shall then multiply the sum of the payor's income up to
29 and including the income cap and all of the payee's income by forty
30 percent.

31 (c) the court shall subtract the income of the payee from the amount
32 derived from clause (b) of this subparagraph.

33 (d) the guideline amount of temporary maintenance shall be the lower
34 of the amounts determined by clauses (a) and (c) of this subparagraph;
35 if the amount determined by clause (c) of this subparagraph is less than
36 or equal to zero, the guideline amount shall be zero dollars.

37 (2) Where the income of the payor exceeds the income cap:

38 (a) the court shall determine the guideline amount of temporary main-
39 tenance for that portion of the payor's income that is up to and includ-
40 ing the income cap according to subparagraph one of this paragraph, and,
41 for the payor's income in excess of the income cap, the court shall
42 determine any additional guideline amount of temporary maintenance
43 through consideration of the following factors:

44 (i) the length of the marriage;

45 (ii) the substantial differences in the incomes of the parties;

46 (iii) the standard of living of the parties established during the
47 marriage;

48 (iv) the age and health of the parties;

49 (v) the present and future earning capacity of the parties;

50 (vi) the need of one party to incur education or training expenses;

51 (vii) the wasteful dissipation of marital property;

52 (viii) the transfer or encumbrance made in contemplation of a matrimo-
53 nial action without fair consideration;

54 (ix) the existence and duration of a pre-marital joint household or a
55 pre-divorce separate household;

1 (x) acts by one party against another that have inhibited or continue
2 to inhibit a party's earning capacity or ability to obtain meaningful
3 employment. Such acts include but are not limited to acts of domestic
4 violence as provided in section four hundred fifty-nine-a of the social
5 services law;
6 (xi) the availability and cost of medical insurance for the parties;
7 (xii) the care of the children or stepchildren, disabled adult chil-
8 dren or stepchildren, elderly parents or in-laws that has inhibited or
9 continues to inhibit a party's earning capacity or ability to obtain
10 meaningful employment;
11 (xiii) the inability of one party to obtain meaningful employment due
12 to age or absence from the workforce;
13 (xiv) the need to pay for exceptional additional expenses for the
14 child or children, including, but not limited to, schooling, day care
15 and medical treatment;
16 (xv) the tax consequences to each party;
17 (xvi) marital property subject to distribution pursuant to subdivision
18 five of this part;
19 (xvii) the reduced or lost earning capacity of the party seeking
20 temporary maintenance as a result of having foregone or delayed educa-
21 tion, training, employment or career opportunities during the marriage;
22 (xviii) the contributions and services of the party seeking temporary
23 maintenance as a spouse, parent, wage earner and homemaker and to the
24 career or career potential of the other party; and
25 (xix) any other factor which the court shall expressly find to be just
26 and proper.
27 (b)] WHERE THE PAYOR'S INCOME IS LOWER THAN OR EQUAL TO THE INCOME
28 CAP, THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE AS FOLLOWS:
29
30 (1) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE PAYEE'S INCOME FROM
31 THIRTY PERCENT OF THE PAYOR'S INCOME.
32 (2) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME AND
33 THE PAYEE'S INCOME BY FORTY PERCENT.
34 (3) THE COURT SHALL SUBTRACT THE PAYEE'S INCOME FROM THE AMOUNT
35 DERIVED FROM SUBPARAGRAPH TWO OF THIS PARAGRAPH.
36 (4) THE COURT SHALL DETERMINE THE LOWER OF AMOUNTS DERIVED BY SUBPARA-
37 GRAPHS ONE AND THREE OF THIS PARAGRAPH.
38 (5) THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE THE AMOUNT
39 DETERMINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH EXCEPT THAT, IF THE
40 AMOUNT DETERMINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH IS LESS THAN OR
41 EQUAL TO ZERO, THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE
42 ZERO DOLLARS.
43 D. WHERE THE PAYOR'S INCOME EXCEEDS THE INCOME CAP, THE COURT SHALL
44 DETERMINE THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE AS FOLLOWS:
45 (1) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN SUBPARA-
46 GRAPHS ONE THROUGH FOUR OF PARAGRAPH C OF THIS SUBDIVISION FOR THE TOTAL
47 INCOMES OF PAYOR AND PAYEE.
48 (2) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN SUBPARA-
49 GRAPHS ONE THROUGH FOUR OF PARAGRAPH C OF THIS SUBDIVISION FOR THE
50 INCOME OF PAYOR UP TO AND INCLUDING THE INCOME CAP AND FOR THE INCOME OF
51 PAYEE.
52 (3) THE GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE SHALL BE EITHER:
53 (A) THE CALCULATION DERIVED FROM SUBPARAGRAPH ONE OF THIS PARAGRAPH;
54 OR

(B) THE AMOUNT DERIVED FROM SUBPARAGRAPH TWO OF THIS PARAGRAPH PLUS AN AMOUNT THAT THE COURT SHALL DETERMINE BY CONSIDERATION OF THE FACTORS SET FORTH IN SUBPARAGRAPH ONE OF PARAGRAPH H OF THIS SUBDIVISION.

(4) In any decision made pursuant to CLAUSE (B) OF SUBPARAGRAPH THREE OF this [subparagraph] PARAGRAPH, the court shall set forth the factors it considered and the reasons for its decision IN WRITING. Such written [order] DECISION may not be waived by either party or counsel.

[(3)] E. Notwithstanding the provisions of this [paragraph] SUBDIVISION, where the guideline amount of temporary maintenance would reduce the payor's income below the self-support reserve for a single person, [the presumptive amount of] the guideline amount of temporary maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there is a rebuttable presumption that no temporary maintenance is awarded.

[d.] F. The court shall determine the [guideline] duration of temporary maintenance by considering the length of the marriage.

G. Temporary maintenance shall terminate upon the issuance of the [final award] DETERMINATION of POST-DIVORCE maintenance or the death of either party, whichever occurs first.

[e.] H. (1) The court shall order the [presumptive award] GUIDELINE AMOUNT of temporary maintenance in accordance with paragraphs c and d of this subdivision, unless the court finds that the [presumptive award] GUIDELINE AMOUNT OF TEMPORARY MAINTENANCE is unjust or inappropriate, WHICH FINDING SHALL BE BASED UPON CONSIDERATION OF THE FOLLOWING FACTORS, and adjusts the [presumptive award] GUIDELINE AMOUNT of temporary maintenance accordingly based upon SUCH consideration [of the following factors]:

(a) [the standard of living of the parties established during the marriage;

(b)] the age and health of the parties;

[(c)] (B) the PRESENT OR FUTURE earning capacity of the parties, INCLUDING THE HISTORY OF LIMITED PARTICIPATION IN THE WORKFORCE;

[(d)] (C) the need of one party to incur education or training expenses;

[(e)] (D) the wasteful dissipation of marital property[;

(f) the transfer], INCLUDING TRANSFERS or [encumbrance] ENCUMBRANCES made in contemplation of a matrimonial action without fair consideration;

[(g)] (E) the existence and duration of a pre-marital joint household or a pre-divorce separate household;

[(h)] (F) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;

[(i)] (G) the availability and cost of medical insurance for the parties;

[(j)] (H) the care of [the] children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws PROVIDED DURING THE MARRIAGE that [has inhibited or continues to inhibit] INHIBITS a party's earning capacity [or ability to obtain meaningful employment];

[(k) the inability of one party to obtain meaningful employment due to age or absence from the workforce;

(l)] (I) the need to pay for exceptional additional expenses for the child or children NOT ALREADY CONSIDERED IN DETERMINING CHILD SUPPORT

1 PURSUANT TO THE CHILD SUPPORT STANDARDS ACT, including, but not limited
2 to, schooling, day care and medical treatment;
3 [(m)] (J) the tax consequences to each party;
4 (K) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE
5 MARRIAGE;
6 [(n)] marital property subject to distribution pursuant to subdivision
7 five of this part;
8 (o)] (L) the reduced or lost earning capacity of the [party seeking
9 temporary maintenance] PAYEE as a result of having foregone or delayed
10 education, training, employment or career opportunities during the
11 marriage;
12 [(p)] the contributions and services of the party seeking temporary
13 maintenance as a spouse, parent, wage earner and homemaker and to the
14 career or career potential of the other party;] and
15 [(q)] (M) any other factor which the court shall expressly find to be
16 just and proper.

17 (2) Where the court finds that the [presumptive award] GUIDELINE
18 AMOUNT of temporary maintenance is unjust or inappropriate and the court
19 adjusts the [presumptive award] GUIDELINE AMOUNT of temporary mainte-
20 nance pursuant to this paragraph, the court shall set forth, in a writ-
21 ten [order] DECISION, the [amount of the unadjusted presumptive award]
22 GUIDELINE AMOUNT of temporary maintenance, the factors it considered,
23 and the reasons that the court adjusted the [presumptive award] GUIDE-
24 LINE AMOUNT of temporary maintenance. Such written [order] DECISION
25 shall not be waived by either party or counsel.

26 (3) Where either or both parties are unrepresented, the court shall
27 not enter a temporary maintenance order unless the COURT INFORMS THE
28 unrepresented party or parties [have been informed] of the [presumptive
29 award] GUIDELINE AMOUNT of temporary maintenance.

30 [f. A validly executed agreement or stipulation voluntarily entered
31 into between the parties in an action commenced after the effective date
32 of this subdivision presented to the court for incorporation in an order
33 shall include a provision stating that the parties have been advised of
34 the provisions of this subdivision, and that the presumptive award
35 provided for therein results in the correct amount of temporary mainte-
36 nance. In the event that such agreement or stipulation deviates from the
37 presumptive award of temporary maintenance, the agreement or stipulation
38 must specify the amount that such presumptive award of temporary mainte-
39 nance would have been and the reason or reasons that such agreement or
40 stipulation does not provide for payment of that amount. Such provision
41 may not be waived by either party or counsel. Nothing contained in this
42 subdivision shall be construed to alter the rights of the parties to
43 voluntarily enter into validly executed agreements or stipulations which
44 deviate from the presumptive award of temporary maintenance provided
45 such agreements or stipulations comply with the provisions of this
46 subdivision. The court shall, however, retain discretion with respect to
47 temporary, and post-divorce maintenance awards pursuant to this section.
48 Any court order incorporating a validly executed agreement or stipu-
49 lation which deviates from the presumptive award of temporary mainte-
50 nance shall set forth the court's reasons for such deviation.

51 g.] I. When a party has defaulted and/or the court is otherwise
52 presented with insufficient evidence to determine [gross] income, the
53 court shall order the temporary maintenance award based upon the needs
54 of the payee or the standard of living of the parties prior to commence-
55 ment of the divorce action, whichever is greater. Such order may be

1 retroactively modified upward without a showing of change in circum-
2 stances upon a showing of newly discovered or obtained evidence.

3 [h.] J. In any action or proceeding for modification of an order of
4 maintenance or alimony existing prior to the effective date of this
5 subdivision, brought pursuant to this article, the temporary maintenance
6 guidelines set forth in this subdivision shall not constitute a change
7 of circumstances warranting modification of such support order.

8 [i. In any decision made pursuant to this subdivision the court shall,
9 where appropriate, consider the effect of a barrier to remarriage, as
10 defined in subdivision six of section two hundred fifty-three of this
11 article, on the factors enumerated in this subdivision.]

12 K. THE COURT MAY ALLOCATE THE RESPONSIBILITIES OF THE RESPECTIVE
13 SPOUSES FOR THE FAMILY'S EXPENSES DURING THE PENDENCY OF THE PROCEEDING.

14 L. THE TEMPORARY MAINTENANCE ORDER SHALL NOT PREJUDICE THE RIGHTS OF
15 EITHER PARTY REGARDING A POST-DIVORCE MAINTENANCE AWARD.

16 S 2. Subdivision 6 of part B of section 236 of the domestic relations
17 law, as amended by chapter 371 of the laws of 2010, is amended to read
18 as follows:

19 6. Post-divorce maintenance awards. a. Except where the parties have
20 entered into an agreement pursuant to subdivision three of this part
21 providing for maintenance, in any matrimonial action the court [may
22 order maintenance in such amount as justice requires, having regard for
23 the standard of living of the parties established during the marriage,
24 whether the party in whose favor maintenance is granted lacks sufficient
25 property and income to provide for his or her reasonable needs and
26 whether the other party has sufficient property or income to provide for
27 the reasonable needs of the other and the circumstances of the case and
28 of the respective parties. Such order shall be effective as of the date
29 of the application therefor, and any retroactive amount of maintenance
30 due shall be paid in one sum or periodic sums, as the court shall
31 direct, taking into account any amount of temporary maintenance which
32 has been paid. In determining the amount and duration of maintenance the
33 court shall consider:

34 (1) the income and property of the respective parties including mari-
35 tal property distributed pursuant to subdivision five of this part;

36 (2) the length of the marriage;

37 (3) the age and health of both parties;

38 (4) the present and future earning capacity of both parties;

39 (5) the need of one party to incur education or training expenses;

40 (6) the existence and duration of a pre-marital joint household or a
41 pre-divorce separate household;

42 (7) acts by one party against another that have inhibited or continue
43 to inhibit a party's earning capacity or ability to obtain meaningful
44 employment. Such acts include but are not limited to acts of domestic
45 violence as provided in section four hundred fifty-nine-a of the social
46 services law;

47 (8) the ability of the party seeking maintenance to become self-sup-
48 porting and, if applicable, the period of time and training necessary
49 therefor;

50 (9) reduced or lost lifetime earning capacity of the party seeking
51 maintenance as a result of having foregone or delayed education, train-
52 ing, employment, or career opportunities during the marriage;

53 (10) the presence of children of the marriage in the respective homes
54 of the parties;

(11) the care of the children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws that has inhibited or continues to inhibit a party's earning capacity;

(12) the inability of one party to obtain meaningful employment due to age or absence from the workforce;

(13) the need to pay for exceptional additional expenses for the child/children, including but not limited to, schooling, day care and medical treatment;

(14) the tax consequences to each party;

(15) the equitable distribution of marital property;

(16) contributions and services of the party seeking maintenance as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party;

(17) the wasteful dissipation of marital property by either spouse;

(18) the transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;

(19) the loss of health insurance benefits upon dissolution of the marriage, and the availability and cost of medical insurance for the parties; and

(20) any other factor which the court shall expressly find to be just and proper] SHALL MAKE ITS AWARD FOR POST-DIVORCE MAINTENANCE PURSUANT TO THE PROVISIONS OF THIS SUBDIVISION.

b. [In any decision made pursuant to this subdivision, the court shall set forth the factors it considered and the reasons for its decision and such may not be waived by either party or counsel.

c. The court may award permanent maintenance, but an award of maintenance shall terminate upon the death of either party or upon the recipient's valid or invalid marriage, or upon modification pursuant to paragraph b of subdivision nine of this part or section two hundred forty-eight of this chapter.

d. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph a of this subdivision.] FOR PURPOSES OF THIS SUBDIVISION, THE FOLLOWING DEFINITIONS SHALL BE USED:

(1) "PAYOR" SHALL MEAN THE SPOUSE WITH THE HIGHER INCOME.

(2) "PAYEE" SHALL MEAN THE SPOUSE WITH THE LOWER INCOME.

(3) "INCOME" SHALL MEAN:

(A) INCOME AS DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED IN SECTION TWO HUNDRED FORTY OF THIS ARTICLE AND SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT, EXCEPT THAT TEMPORARY MAINTENANCE PAID PURSUANT TO SUBDIVISION FIVE-A OF THIS PART AND SPOUSAL SUPPORT PAID PURSUANT TO SECTION FOUR HUNDRED TWELVE OF THE FAMILY COURT ACT, SHALL NOT BE DEDUCTED FROM PAYOR'S INCOME; AND

(B) INCOME FROM INCOME-PRODUCING PROPERTY DISTRIBUTED OR TO BE DISTRIBUTED PURSUANT TO SUBDIVISION FIVE OF THIS PART.

(4) "INCOME CAP" SHALL MEAN UP TO AND INCLUDING TWO HUNDRED THOUSAND DOLLARS OF THE PAYOR'S ANNUAL INCOME; PROVIDED, HOWEVER, BEGINNING JANUARY THIRTY-FIRST, TWO THOUSAND SIXTEEN AND EVERY TWO YEARS THEREAFTER, THE INCOME CAP AMOUNT SHALL INCREASE BY THE SUM OF THE AVERAGE ANNUAL PERCENTAGE CHANGES IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U) AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS FOR THE PRIOR TWO YEARS MULTIPLIED BY THE CURRENT PAYOR'S ANNUAL INCOME AMOUNT AND THEN ROUNDED TO THE NEAREST ONE THOU-

1 SAND DOLLARS. THE OFFICE OF COURT ADMINISTRATION SHALL DETERMINE AND
2 PUBLISH THE INCOME CAP.

3 (5) "GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE" SHALL MEAN THE
4 DOLLAR AMOUNT DERIVED BY THE APPLICATION OF PARAGRAPH C OR D OF THIS
5 SUBDIVISION.

6 (6) "GUIDELINE DURATION OF POST-DIVORCE MAINTENANCE" SHALL MEAN THE
7 DURATIONAL PERIOD DETERMINED BY THE APPLICATION OF PARAGRAPH E OF THIS
8 SUBDIVISION.

9 (7) "POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION" SHALL MEAN THE
10 GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE AND THE GUIDELINE DURATION
11 OF POST-DIVORCE MAINTENANCE.

12 (8) "LENGTH OF MARRIAGE" SHALL MEAN THE PERIOD FROM THE DATE OF
13 MARRIAGE UNTIL THE DATE OF COMMENCEMENT OF ACTION.

14 (9) "SELF-SUPPORT RESERVE" SHALL MEAN THE SELF-SUPPORT RESERVE AS
15 DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED IN SECTION TWO
16 HUNDRED FORTY OF THIS ARTICLE AND SECTION FOUR HUNDRED THIRTEEN OF THE
17 FAMILY COURT ACT.

18 C. WHERE THE PAYOR'S INCOME IS LOWER THAN OR EQUAL TO THE INCOME CAP,
19 THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE AS FOLLOWS:

21 (1) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE PAYEE'S INCOME FROM
22 THIRTY PERCENT OF THE PAYOR'S INCOME.

23 (2) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME AND
24 THE PAYEE'S INCOME BY FORTY PERCENT.

25 (3) THE COURT SHALL SUBTRACT THE PAYEE'S INCOME FROM THE AMOUNT
26 DERIVED FROM SUBPARAGRAPH TWO OF THIS PARAGRAPH.

27 (4) THE COURT SHALL DETERMINE THE LOWER OF AMOUNTS DERIVED BY SUBPARA-
28 GRAPHS ONE AND THREE OF THIS PARAGRAPH.

29 (5) THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE THE
30 AMOUNT DETERMINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH EXCEPT THAT, IF
31 THE AMOUNT DETERMINED BY SUBPARAGRAPH FOUR OF THIS PARAGRAPH IS LESS
32 THAN OR EQUAL TO ZERO, THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE
33 SHALL BE ZERO DOLLARS.

34 (6) NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, WHERE THE
35 GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE WOULD REDUCE THE PAYOR'S
36 INCOME BELOW THE SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE GUIDELINE
37 AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE THE DIFFERENCE BETWEEN THE
38 PAYOR'S INCOME AND THE SELF-SUPPORT RESERVE. IF THE PAYOR'S INCOME IS
39 BELOW THE SELF-SUPPORT RESERVE, THERE IS A REBUTTABLE PRESUMPTION THAT
40 NO POST-DIVORCE MAINTENANCE IS AWARDED.

41 D. WHERE THE PAYOR'S INCOME EXCEEDS THE INCOME CAP, THE COURT SHALL
42 DETERMINE THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE AS FOLLOWS:

43 (1) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN SUBPARA-
44 GRAPHS ONE THROUGH FOUR OF PARAGRAPH C OF THIS SUBDIVISION FOR THE TOTAL
45 INCOMES OF PAYOR AND PAYEE.

46 (2) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN SUBPARA-
47 GRAPHS ONE THROUGH FOUR OF PARAGRAPH C OF THIS SUBDIVISION FOR THE
48 INCOME OF PAYOR UP TO AND INCLUDING THE INCOME CAP AND FOR THE INCOME OF
49 PAYEE.

50 (3) THE GUIDELINE AMOUNT OF POST-DIVORCE MAINTENANCE SHALL BE EITHER:

51 (A) THE CALCULATION DERIVED FROM SUBPARAGRAPH ONE OF THIS PARAGRAPH;
52 OR

53 (B) THE AMOUNT DERIVED FROM SUBPARAGRAPH TWO OF THIS PARAGRAPH PLUS AN
54 AMOUNT THAT THE COURT SHALL DETERMINE BY CONSIDERATION OF THE FACTORS
55 SET FORTH IN SUBPARAGRAPH ONE OF PARAGRAPH F OF THIS SUBDIVISION.

(4) IN ANY DECISION MADE PURSUANT TO CLAUSE (B) OF SUBPARAGRAPH THREE OF THIS PARAGRAPH, THE COURT SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE REASONS FOR ITS DECISION IN WRITING. SUCH WRITTEN DECISION MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

E. THE GUIDELINE DURATION OF POST-DIVORCE MAINTENANCE SHALL BE DETERMINED AS FOLLOWS:

(1) THE COURT SHALL DETERMINE THE GUIDELINE DURATION OF POST-DIVORCE MAINTENANCE IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

LENGTH OF THE MARRIAGE	PERCENT OF THE LENGTH OF THE MARRIAGE FOR WHICH MAINTENANCE WILL BE PAYABLE
0 UP TO AND INCLUDING 5 YEARS	20%
MORE THAN 5, UP TO AND INCLUDING 7.5 YEARS	30%
MORE THAN 7.5, UP TO AND INCLUDING 10 YEARS	40%
MORE THAN 10, UP TO AND INCLUDING 12.5 YEARS	50%
MORE THAN 12.5, UP TO AND INCLUDING 15 YEARS	60%
MORE THAN 15, UP TO AND INCLUDING 17.5 YEARS	70%
MORE THAN 17.5, UP TO AND INCLUDING 20 YEARS	80%
MORE THAN 20, UP TO AND INCLUDING 25 YEARS	90%
MORE THAN 25 YEARS	NONDURATIONAL

(2) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARAGRAPH, POST-DIVORCE MAINTENANCE SHALL TERMINATE UPON THE DEATH OF THE PAYOR OR PAYEE OR UPON THE PAYEE'S VALID OR INVALID MARRIAGE.

F. (1) THE COURT SHALL ORDER THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION IN ACCORDANCE WITH PARAGRAPHS C, D AND E OF THIS SUBDIVISION, UNLESS THE COURT FINDS THAT THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION IS UNJUST OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDERATION OF THE FOLLOWING FACTORS, AND ADJUSTS THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION ACCORDINGLY BASED UPON SUCH CONSIDERATION:

- (A) THE AGE AND HEALTH OF THE PARTIES;
- (B) THE PRESENT OR FUTURE EARNING CAPACITY OF THE PARTIES, INCLUDING THE HISTORY OF LIMITED PARTICIPATION IN THE WORKFORCE;
- (C) THE NEED OF ONE PARTY TO INCUR EDUCATION OR TRAINING EXPENSES;
- (D) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY, INCLUDING TRANSFERS OR ENCUMBRANCES MADE IN CONTEMPLATION OF A MATRIMONIAL ACTION WITHOUT FAIR CONSIDERATION;
- (E) THE EXISTENCE AND DURATION OF A PRE-MARITAL JOINT HOUSEHOLD OR A PRE-DIVORCE SEPARATE HOUSEHOLD;
- (F) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL EMPLOYMENT. SUCH ACTS INCLUDE BUT ARE NOT LIMITED TO ACTS OF DOMESTIC VIOLENCE AS PROVIDED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL SERVICES LAW;
- (G) THE AVAILABILITY AND COST OF MEDICAL INSURANCE FOR THE PARTIES;
- (H) THE CARE OF CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN OR STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS PROVIDED DURING THE MARRIAGE THAT INHIBITS A PARTY'S EARNING CAPACITY;
- (I) THE NEED TO PAY FOR EXCEPTIONAL ADDITIONAL EXPENSES FOR THE CHILD OR CHILDREN NOT ALREADY CONSIDERED IN DETERMINING CHILD SUPPORT PURSUANT TO THE CHILD SUPPORT STANDARDS ACT, INCLUDING, BUT NOT LIMITED TO, SCHOOLING, DAY CARE AND MEDICAL TREATMENT;
- (J) THE TAX CONSEQUENCES TO EACH PARTY;
- (K) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE MARRIAGE;

1 (L) THE REDUCED OR LOST EARNING CAPACITY OF THE PAYEE AS A RESULT OF
2 HAVING FOREGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER
3 OPPORTUNITIES DURING THE MARRIAGE;

4 (M) THE EQUITABLE DISTRIBUTION OF MARITAL PROPERTY;

5 (N) THE CONTRIBUTIONS AND SERVICES OF THE PAYEE AS A SPOUSE, PARENT,
6 WAGE EARNER AND HOMEMAKER AND TO THE CAREER OR CAREER POTENTIAL OF THE
7 OTHER PARTY;

8 (O) ACTUAL RETIREMENT OF THE PAYOR IF THE RETIREMENT RESULTS IN A
9 SUBSTANTIAL CHANGE IN FINANCIAL CIRCUMSTANCES; AND

10 (P) ANY OTHER FACTOR WHICH THE COURT SHALL EXPRESSLY FIND TO BE JUST
11 AND PROPER.

12 (2) WHERE THE COURT FINDS THAT THE POST-DIVORCE MAINTENANCE GUIDELINE
13 OBLIGATION IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE POST-DI-
14 VORCE MAINTENANCE GUIDELINE OBLIGATION PURSUANT TO THIS PARAGRAPH, THE
15 COURT SHALL SET FORTH, IN A WRITTEN DECISION, THE UNADJUSTED POST-DI-
16 VORCE MAINTENANCE GUIDELINE OBLIGATION, THE FACTORS IT CONSIDERED, AND
17 THE REASONS THAT THE COURT ADJUSTED THE POST-DIVORCE MAINTENANCE OBLI-
18 GATION. SUCH WRITTEN DECISION SHALL NOT BE WAIVED BY EITHER PARTY OR
19 COUNSEL.

20 G. WHERE EITHER OR BOTH PARTIES ARE UNREPRESENTED, THE COURT SHALL NOT
21 ENTER A MAINTENANCE ORDER OR JUDGMENT UNLESS THE COURT INFORMS THE
22 UNREPRESENTED PARTY OR PARTIES OF THE POST-DIVORCE MAINTENANCE GUIDELINE
23 OBLIGATION.

24 H. A VALIDLY EXECUTED AGREEMENT OR STIPULATION VOLUNTARILY ENTERED
25 INTO BETWEEN THE PARTIES IN AN ACTION COMMENCED AFTER THE EFFECTIVE DATE
26 OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FOURTEEN WHICH AMENDED THIS
27 SUBDIVISION PRESENTED TO THE COURT FOR INCORPORATION IN AN ORDER OR
28 JUDGMENT SHALL INCLUDE A PROVISION STATING THAT THE PARTIES HAVE BEEN
29 ADVISED OF THE PROVISIONS OF THIS SUBDIVISION, AND THAT THE POST-DIVORCE
30 MAINTENANCE GUIDELINE OBLIGATION PROVIDED FOR THEREIN WOULD PRESUMPTIVE-
31 LY RESULT IN THE CORRECT AMOUNT OF POST-DIVORCE MAINTENANCE. IN THE
32 EVENT THAT SUCH AGREEMENT OR STIPULATION DEVIATES FROM THE POST-DIVORCE
33 MAINTENANCE GUIDELINE OBLIGATION, THE AGREEMENT OR STIPULATION MUST
34 SPECIFY THE AMOUNT THAT SUCH POST-DIVORCE MAINTENANCE GUIDELINE OBLI-
35 GATION WOULD HAVE BEEN AND THE REASON OR REASONS THAT SUCH AGREEMENT OR
36 STIPULATION DOES NOT PROVIDE FOR PAYMENT OF THAT AMOUNT. SUCH PROVISION
37 MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL. NOTHING CONTAINED IN THIS
38 SUBDIVISION SHALL BE CONSTRUED TO ALTER THE RIGHTS OF THE PARTIES TO
39 VOLUNTARILY ENTER INTO VALIDLY EXECUTED AGREEMENTS OR STIPULATIONS WHICH
40 DEVIATE FROM THE POST-DIVORCE MAINTENANCE GUIDELINE OBLIGATION PROVIDED
41 SUCH AGREEMENTS OR STIPULATIONS COMPLY WITH THE PROVISIONS OF THIS
42 SUBDIVISION. ANY COURT ORDER INCORPORATING A VALIDLY EXECUTED AGREEMENT
43 OR STIPULATION WHICH DEVIATES FROM THE POST-DIVORCE MAINTENANCE GUIDE-
44 LINE OBLIGATION SHALL SET FORTH THE COURT'S REASONS FOR SUCH DEVIATION.

45 I. WHEN A PARTY HAS DEFAULTED AND/OR THE COURT IS OTHERWISE PRESENTED
46 WITH INSUFFICIENT EVIDENCE TO DETERMINE INCOME, THE COURT SHALL ORDER
47 THE POST-DIVORCE MAINTENANCE BASED UPON THE NEEDS OF THE PAYEE OR THE
48 STANDARD OF LIVING OF THE PARTIES PRIOR TO COMMENCEMENT OF THE DIVORCE
49 ACTION, WHICHEVER IS GREATER. SUCH ORDER MAY BE RETROACTIVELY MODIFIED
50 UPWARD WITHOUT A SHOWING OF CHANGE IN CIRCUMSTANCES UPON A SHOWING OF
51 NEWLY DISCOVERED OR OBTAINED EVIDENCE.

52 J. POST-DIVORCE MAINTENANCE MAY BE MODIFIED PURSUANT TO PARAGRAPH B OF
53 SUBDIVISION NINE OF THIS PART.

54 K. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTE-
55 NANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF
56 THE LAWS OF TWO THOUSAND FOURTEEN WHICH AMENDED THIS SUBDIVISION,

1 BROUGHT PURSUANT TO THIS ARTICLE, THE GUIDELINES FOR POST-DIVORCE MAIN-
2 TENANCE SET FORTH IN THIS SUBDIVISION SHALL NOT CONSTITUTE A CHANGE OF
3 CIRCUMSTANCES WARRANTING MODIFICATION OF SUCH SUPPORT ORDER.

4 L. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF MAINTENANCE OR ALIMONY EXISTING PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF
5 THE LAWS OF TWO THOUSAND FOURTEEN WHICH AMENDED THIS SUBDIVISION,
6 BROUGHT PURSUANT TO THIS ARTICLE, THE GUIDELINES FOR POST-DIVORCE MAIN-
7 TENANCE SET FORTH IN PARAGRAPHS C, D AND E OF THIS SUBDIVISION SHALL
8 APPLY.

9
10 M. IN ANY DECISION MADE PURSUANT TO THIS SUBDIVISION THE COURT SHALL,
11 WHERE APPROPRIATE, CONSIDER THE EFFECT OF A BARRIER TO REMARRIAGE, AS
12 DEFINED IN SUBDIVISION SIX OF SECTION TWO HUNDRED FIFTY-THREE OF THIS
13 ARTICLE, ON THE FACTORS ENUMERATED IN PARAGRAPH F OF THIS SUBDIVISION.

14 S 3. Subparagraph 1 of paragraph b of subdivision 9 of part B of
15 section 236 of the domestic relations law, as amended by chapter 182 of
16 the laws of 2010, is amended to read as follows:

17 (1) Upon application by either party, the court may annul or modify
18 any prior order or judgment as to maintenance, upon a showing of the
19 [recipient's] PAYEE'S inability to be self-supporting [or a substantial
20 change in circumstance or], THE termination of child support awarded
21 pursuant to section two hundred forty of this article, OR A SUBSTANTIAL
22 CHANGE IN CIRCUMSTANCE including financial hardship AND ACTUAL RETIRE-
23 MENT OF THE PAYOR IF THE RETIREMENT RESULTS IN A SUBSTANTIAL CHANGE IN
24 FINANCIAL CIRCUMSTANCES. Where, after the effective date of this part, a
25 separation agreement remains in force no modification of a prior order
26 or judgment incorporating the terms of said agreement shall be made as
27 to maintenance without a showing of extreme hardship on either party, in
28 which event the judgment or order as modified shall supersede the terms
29 of the prior agreement and judgment for such period of time and under
30 such circumstances as the court determines. The court shall not reduce
31 or annul any arrears of maintenance which have been reduced to final
32 judgment pursuant to section two hundred forty-four of this article. No
33 other arrears of maintenance which have accrued prior to the making of
34 such application shall be subject to modification or annulment unless
35 the defaulting party shows good cause for failure to make application
36 for relief from the judgment or order directing such payment prior to
37 the accrual of such arrears and the facts and circumstances constituting
38 good cause are set forth in a written memorandum of decision. Such
39 modification may increase maintenance nunc pro tunc as of the date of
40 application based on newly discovered evidence. Any retroactive amount
41 of maintenance due shall, except as provided for herein, be paid in one
42 sum or periodic sums, as the court directs, taking into account any
43 temporary or partial payments which have been made. The provisions of
44 this subdivision shall not apply to a separation agreement made prior to
45 the effective date of this part.

46 S 4. Section 412 of the family court act, as amended by chapter 281 of
47 the laws of 1980, is amended to read as follows:

48 S 412. Married person's duty to support spouse. 1. A married person is
49 chargeable with the support of his or her spouse and, [if possessed of
50 sufficient means or able to earn such means, may be required to pay for
51 his or her support a fair and reasonable sum, as the court may deter-
52 mine, having due regard to the circumstances of the respective parties.]
53 EXCEPT WHERE THE PARTIES HAVE ENTERED INTO AN AGREEMENT PURSUANT TO
54 SECTION FOUR HUNDRED TWENTY-FIVE OF THIS ARTICLE PROVIDING FOR SUPPORT,
55 THE COURT SHALL MAKE ITS AWARD FOR SPOUSAL SUPPORT PURSUANT TO THE
56 PROVISIONS OF THIS PART.

2. FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL BE USED:

(A) "PAYOR" SHALL MEAN THE SPOUSE WITH THE HIGHER INCOME.

(B) "PAYEE" SHALL MEAN THE SPOUSE WITH THE LOWER INCOME.

(C) "INCOME" SHALL MEAN INCOME AS DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED IN SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW AND SECTION FOUR HUNDRED THIRTEEN OF THIS PART.

(D) "INCOME CAP" SHALL MEAN UP TO AND INCLUDING TWO HUNDRED THOUSAND DOLLARS OF THE PAYOR'S ANNUAL INCOME; PROVIDED, HOWEVER, BEGINNING JANUARY THIRTY-FIRST, TWO THOUSAND SIXTEEN AND EVERY TWO YEARS THEREAFTER, THE INCOME CAP AMOUNT SHALL INCREASE BY THE SUM OF THE AVERAGE ANNUAL PERCENTAGE CHANGES IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U) AS PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS FOR THE PRIOR TWO YEARS MULTIPLIED BY THE CURRENT PAYOR'S ANNUAL INCOME AMOUNT AND THEN ROUNDED TO THE NEAREST ONE THOUSAND DOLLARS. THE OFFICE OF COURT ADMINISTRATION SHALL DETERMINE AND PUBLISH THE INCOME CAP.

(E) "GUIDELINE AMOUNT OF SPOUSAL SUPPORT" SHALL MEAN THE SUM DERIVED BY THE APPLICATION OF SUBDIVISION THREE OR FOUR OF THIS SECTION.

(F) "SELF-SUPPORT RESERVE" SHALL MEAN THE SELF-SUPPORT RESERVE AS DEFINED IN THE CHILD SUPPORT STANDARDS ACT AND CODIFIED IN SECTION TWO HUNDRED FORTY OF THE DOMESTIC RELATIONS LAW AND SECTION FOUR HUNDRED THIRTEEN OF THIS PART.

3. WHERE THE PAYOR'S INCOME IS LOWER THAN OR EQUAL TO THE INCOME CAP, THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT AS FOLLOWS:

(A) THE COURT SHALL SUBTRACT TWENTY PERCENT OF THE PAYEE'S INCOME FROM THIRTY PERCENT OF THE PAYOR'S INCOME.

(B) THE COURT SHALL THEN MULTIPLY THE SUM OF THE PAYOR'S INCOME AND THE PAYEE'S INCOME BY FORTY PERCENT.

(C) THE COURT SHALL SUBTRACT THE PAYEE'S INCOME FROM THE AMOUNT DERIVED FROM PARAGRAPH (B) OF THIS SUBDIVISION.

(D) THE COURT SHALL DETERMINE THE LOWER OF AMOUNTS DERIVED BY PARAGRAPHS (A) AND (C) OF THIS SUBDIVISION.

(E) THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT SHALL BE THE AMOUNT DETERMINED BY PARAGRAPH (D) OF THIS SUBDIVISION EXCEPT THAT, IF THE AMOUNT DETERMINED BY PARAGRAPH (D) OF THIS SUBDIVISION IS LESS THAN OR EQUAL TO ZERO, THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT SHALL BE ZERO DOLLARS.

4. WHERE THE PAYOR'S INCOME EXCEEDS THE INCOME CAP, THE COURT SHALL DETERMINE THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT AS FOLLOWS:

(A) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN PARAGRAPHS (A) THROUGH (D) OF SUBDIVISION THREE OF THIS SECTION FOR THE TOTAL INCOMES OF PAYOR AND PAYEE.

(B) THE COURT SHALL PERFORM THE CALCULATIONS SET FORTH IN PARAGRAPHS (A) THROUGH (D) OF SUBDIVISION THREE OF THIS SECTION FOR THE INCOME OF PAYOR UP TO AND INCLUDING THE INCOME CAP AND FOR THE INCOME OF PAYEE.

(C) THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT SHALL BE EITHER:

(1) THE CALCULATION DERIVED FROM PARAGRAPH (A) OF THIS SUBDIVISION; OR

(2) THE AMOUNT DERIVED FROM PARAGRAPH (B) OF THIS SUBDIVISION PLUS AN AMOUNT THAT THE COURT SHALL DETERMINE BY CONSIDERATION OF THE FACTORS SET FORTH IN PARAGRAPH (A) OF SUBDIVISION SIX OF THIS SECTION.

(D) IN ANY DECISION MADE PURSUANT TO SUBPARAGRAPH TWO OF PARAGRAPH (C) OF THIS SUBDIVISION, THE COURT SHALL SET FORTH THE FACTORS IT CONSIDERED AND THE REASONS FOR ITS DECISION IN WRITING. SUCH WRITTEN DECISION MAY NOT BE WAIVED BY EITHER PARTY OR COUNSEL.

1 5. NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, WHERE THE GUIDELINE
2 AMOUNT OF SPOUSAL SUPPORT WOULD REDUCE THE PAYOR'S INCOME BELOW THE
3 SELF-SUPPORT RESERVE FOR A SINGLE PERSON, THE GUIDELINE AMOUNT OF SPOUS-
4 AL SUPPORT SHALL BE THE DIFFERENCE BETWEEN THE PAYOR'S INCOME AND THE
5 SELF-SUPPORT RESERVE. IF THE PAYOR'S INCOME IS BELOW THE SELF-SUPPORT
6 RESERVE, THERE IS A REBUTTABLE PRESUMPTION THAT NO SPOUSAL SUPPORT IS
7 AWARDED.

8 6. (A) THE COURT SHALL ORDER THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT
9 IN ACCORDANCE WITH SUBDIVISIONS THREE AND FOUR OF THIS SECTION, UNLESS
10 THE COURT FINDS THAT THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT IS UNJUST
11 OR INAPPROPRIATE, WHICH FINDING SHALL BE BASED UPON CONSIDERATION OF THE
12 FOLLOWING FACTORS, AND ADJUSTS THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT
13 ACCORDINGLY BASED UPON CONSIDERATION:

14 (1) THE AGE AND HEALTH OF THE PARTIES;

15 (2) THE PRESENT OR FUTURE EARNING CAPACITY OF THE PARTIES, INCLUDING
16 THE HISTORY OF LIMITED PARTICIPATION IN THE WORKFORCE;

17 (3) THE NEED OF ONE PARTY TO INCUR EDUCATION OR TRAINING EXPENSES;

18 (4) THE WASTEFUL DISSIPATION OF MARITAL PROPERTY, INCLUDING TRANSFERS
19 OR ENCUMBRANCES MADE IN CONTEMPLATION OF A SUPPORT PROCEEDING WITHOUT
20 FAIR CONSIDERATION;

21 (5) THE EXISTENCE AND DURATION OF A PRE-MARITAL JOINT HOUSEHOLD OR A
22 PRE-SUPPORT PROCEEDINGS SEPARATE HOUSEHOLD;

23 (6) ACTS BY ONE PARTY AGAINST ANOTHER THAT HAVE INHIBITED OR CONTINUE
24 TO INHIBIT A PARTY'S EARNING CAPACITY OR ABILITY TO OBTAIN MEANINGFUL
25 EMPLOYMENT. SUCH ACTS INCLUDE BUT ARE NOT LIMITED TO ACTS OF DOMESTIC
26 VIOLENCE AS PROVIDED IN SECTION FOUR HUNDRED FIFTY-NINE-A OF THE SOCIAL
27 SERVICES LAW;

28 (7) THE AVAILABILITY AND COST OF MEDICAL INSURANCE FOR THE PARTIES;

29 (8) THE CARE OF CHILDREN OR STEPCHILDREN, DISABLED ADULT CHILDREN OR
30 STEPCHILDREN, ELDERLY PARENTS OR IN-LAWS PROVIDED DURING THE MARRIAGE
31 THAT INHIBITS A PARTY'S EARNING CAPACITY;

32 (9) THE NEED TO PAY FOR EXCEPTIONAL ADDITIONAL EXPENSES FOR THE CHILD
33 OR CHILDREN NOT ALREADY CONSIDERED IN DETERMINING CHILD SUPPORT PURSUANT
34 TO THE CHILD SUPPORT STANDARDS ACT, INCLUDING, BUT NOT LIMITED TO,
35 SCHOOLING, DAY CARE AND MEDICAL TREATMENT;

36 (10) THE TAX CONSEQUENCES TO EACH PARTY;

37 (11) THE STANDARD OF LIVING OF THE PARTIES ESTABLISHED DURING THE
38 MARRIAGE;

39 (12) THE REDUCED OR LOST EARNING CAPACITY OF THE PAYEE AS A RESULT OF
40 HAVING FOREGONE OR DELAYED EDUCATION, TRAINING, EMPLOYMENT OR CAREER
41 OPPORTUNITIES DURING THE MARRIAGE;

42 (13) THE CONTRIBUTIONS AND SERVICES OF THE PAYEE AS A SPOUSE, PARENT,
43 WAGE EARNER AND HOMEMAKER AND TO THE CAREER OR CAREER POTENTIAL OF THE
44 OTHER PARTY; AND

45 (14) ANY OTHER FACTOR WHICH THE COURT SHALL EXPRESSLY FIND TO BE JUST
46 AND PROPER.

47 (B) WHERE THE COURT FINDS THAT THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT
48 IS UNJUST OR INAPPROPRIATE AND THE COURT ADJUSTS THE GUIDELINE AMOUNT OF
49 SPOUSAL SUPPORT PURSUANT TO THIS SUBDIVISION, THE COURT SHALL SET FORTH,
50 IN A WRITTEN DECISION, THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT, THE
51 FACTORS IT CONSIDERED, AND THE REASONS THAT THE COURT ADJUSTED THE
52 GUIDELINE AMOUNT OF SPOUSAL SUPPORT. SUCH WRITTEN DECISION SHALL NOT BE
53 WAIVED BY EITHER PARTY OR COUNSEL.

54 (C) WHERE EITHER OR BOTH PARTIES ARE UNREPRESENTED, THE COURT SHALL
55 NOT ENTER A SPOUSAL SUPPORT ORDER UNLESS THE COURT INFORMS THE UNREPRE-
56 SENTED PARTY OR PARTIES OF THE GUIDELINE AMOUNT OF SPOUSAL SUPPORT.

1 7. WHEN A PARTY HAS DEFAULTED AND/OR THE COURT IS OTHERWISE PRESENTED
2 WITH INSUFFICIENT EVIDENCE TO DETERMINE INCOME, THE COURT SHALL ORDER
3 THE SPOUSAL SUPPORT AWARD BASED UPON THE NEEDS OF THE PAYEE OR THE STAN-
4 DARD OF LIVING OF THE PARTIES PRIOR TO COMMENCEMENT OF THE SPOUSAL
5 SUPPORT PROCEEDING, WHICHEVER IS GREATER. SUCH ORDER MAY BE RETROAC-
6 TIVELY MODIFIED UPWARD WITHOUT A SHOWING OF CHANGE IN CIRCUMSTANCES UPON
7 A SHOWING OF NEWLY DISCOVERED OR OBTAINED EVIDENCE.

8 8. IN ANY ACTION OR PROCEEDING FOR MODIFICATION OF AN ORDER OF SPOUSAL
9 SUPPORT EXISTING PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS
10 OF TWO THOUSAND FOURTEEN WHICH AMENDED THIS SECTION, BROUGHT PURSUANT TO
11 THIS ARTICLE, THE SPOUSAL SUPPORT GUIDELINES SET FORTH IN THIS SECTION
12 SHALL NOT CONSTITUTE A CHANGE OF CIRCUMSTANCES WARRANTING MODIFICATION
13 OF SUCH SPOUSAL SUPPORT ORDER.

14 S 5. Paragraph a of subdivision 1 of part B of section 236 of the
15 domestic relations law, as amended by chapter 371 of the laws of 2010,
16 is amended to read as follows:

17 a. The term "maintenance" shall mean payments provided for in a valid
18 agreement between the parties or awarded by the court in accordance with
19 the provisions of subdivisions five-a and six of this part, to be paid
20 at fixed intervals for a definite or indefinite period of time, but an
21 award of maintenance shall terminate upon the death of either party or
22 upon the [recipient's] PAYEE'S valid or invalid marriage, or upon
23 modification pursuant to paragraph (b) of subdivision nine of [section
24 two hundred thirty-six of] this part or section two hundred forty-eight
25 of this chapter.

26 S 6. Subparagraph 7 of paragraph d of subdivision 5 of part B of
27 section 236 of the domestic relations law, as amended by chapter 281 of
28 the laws of 1980 and as renumbered by chapter 229 of the laws of 2009,
29 is amended to read as follows:

30 (7) any equitable claim to, interest in, or direct or indirect
31 contribution made to the acquisition of such marital property by the
32 party not having title, including joint efforts or expenditures and
33 contributions and services as a spouse, parent, wage earner and homemak-
34 er, and to the career or career potential of the other party. THE COURT
35 SHALL NOT CONSIDER AS MARITAL PROPERTY SUBJECT TO DISTRIBUTION THE VALUE
36 OF A SPOUSE'S ENHANCED EARNING CAPACITY ARISING FROM A LICENSE, DEGREE,
37 CELEBRITY GOODWILL, OR CAREER ENHANCEMENT. HOWEVER, IN ARRIVING AT AN
38 EQUITABLE DIVISION OF MARITAL PROPERTY, THE COURT SHALL CONSIDER THE
39 DIRECT OR INDIRECT CONTRIBUTIONS TO THE DEVELOPMENT DURING THE MARRIAGE
40 OF THE ENHANCED EARNING CAPACITY OF THE OTHER SPOUSE;

41 S 7. Section 248 of the domestic relations law, as amended by chapter
42 604 of the laws of 1975, is amended to read as follows:

43 S 248. Modification of judgment or order in action for divorce or
44 annulment. Where an action for divorce or for annulment or for a decla-
45 ration of the nullity of a void marriage is brought by a husband or
46 wife, and a final judgment of divorce or a final judgment annulling the
47 marriage or declaring its nullity has been rendered, the court, by order
48 upon the application of the [husband] PAYOR on notice, and on proof of
49 the marriage of the [wife] PAYEE after such final judgment, must modify
50 such final judgment and any orders made with respect thereto by annull-
51 ing the provisions of such final judgment or orders, or of both, direct-
52 ing payments of money for the support of the [wife] PAYEE. The court in
53 its discretion upon application of the [husband] PAYOR on notice, upon
54 proof that the [wife] PAYEE is habitually living with another [man]
55 PERSON and holding HIMSELF OR herself out as [his wife] THE SPOUSE OF
56 SUCH OTHER PERSON, although not married to such [man] OTHER PERSON, may

1 modify such final judgment and any orders made with respect thereto by
2 annulling the provisions of such final judgment or orders or of both,
3 directing payment of money for the support of such [wife] PAYEE.
4 S 8. This act shall take effect on the sixtieth day after it shall
5 have become a law.