

Maintenance (Alimony) By Formula

The Illinois maintenance legislation adopted in 2016 and recently amended, effective January 1, 2018, attempts to create a streamlined option for Courts and parties to use in determining how much and for how long maintenance should be paid and received. It is a formulaic approach that will apply to most cases and, in order to avoid its application, the Court is required to give specific reasons why it was not applied.

As a result, subjective decision making is minimized by the new law.

Under the new law, the first step for determining maintenance is for the Court to decide if there should be any at all (5/504(a) and (b-2)(1)). The court must make findings for its reasons for granting or denying maintenance by referring to the factors set out in the statute which include the following: income and property of each party; needs of each party; present and future earning capacity; impairment to earnings by a party devoting time for domestic duties; present or future earning capacity of the party against whom maintenance is sought; time necessary to enable the party seeking maintenance to educate, gain employment and support themselves; standard of living during the marriage; duration of marriage; party's age, health, skills, employability, assets and liabilities; property division and economic circumstances from the dissolution; contributions and services by a party seeking maintenance to the education, training, career or career

potential, or obtaining a license by the other spouse; any valid agreement of the parties and any other factor the Court finds to be just and equitable. If, after considering those factors, the Court finds that a party is entitled to maintenance, then the Court would go to the next step to determine the amount and duration. If, after considering those factors, the Court finds that maintenance should be denied, there is no more to do.

The next step deals with a mandatory presumption that using the guideline formula results in the proper amount and duration of maintenance. Use of the formula is required when the parties' combined income is less than \$500,000. This includes a very high percentage of people divorcing in

Illinois. The measure for determining the duration of maintenance is the "duration of marriage." For formula purposes, the statute defines the marriage's duration for maintenance from the date of marriage to the date the dissolution action is filed.

Depending on the marriage duration, the period over which maintenance will be paid is to be equal to a graduating scale beginning with marriages of less than 5

years to marriages of 19 years at between 20% and 80% of the duration of the marriage. The 20% is for marriages less than 5 years and periods thereafter increase by 4% each year until 80% is reached at 19 years.



Donald C. Schiller

Senior Partner
dschiller@sdfllaw.com

The legislature's purpose for these changes is to streamline the process of setting maintenance and assure uniformity.

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SDF Congratulates the 38 lawyers selected to Super Lawyers 2018

Schiller DuCanto & Fleck congratulates 38 of our lawyers on their selection to Super Lawyers and Rising Stars 2018. The lawyers selected to Super Lawyers include: Jay Dahlin, Timothy Daw, Charles Fleck, Meighan Harmon, Burton Hochberg, David Hopkins, Jessica Bank Interlandi, Michele Jochner, Jennifer Dillon Kotz, Michelle Lawless, Benjamin Mackoff, Carlton Marcyan, Claire McKenzie, Andrea Muchin, Karen Pinkert-Lieb, Donald Schiller, Brian Schroeder, Eric Schulman, Jason Sposeep, Tanya Stanish, Arnold Stein, Anita Ventrelli, Jane Waller and Erika Wyatt. Rising Stars include: Allison Adams, Leslie Arenson, Jacqueline Stephens Breisch, Brett Buckley, Kimberly Cook, Brittany Heitz Goodlett, Joshua Jackson, Gregory Maksimuk, Eric Pfanenstiel, Patrick Ryan, Karen Schetz, Thomas Villanti, Evan Whitfield and Adam Zebelian.

Pet Custody

Companion animals, commonly referred to as “pets,” play an ever-increasing role in our society. According to the American Academy of Matrimonial Lawyers, disputes over family pets in divorce cases have risen over the past several years. Dogs were the focus of 88 percent of animal disputes, while cats were a distant second with 22 percent.

The strong emotional bond that binds people to their pets is undeniable, and it is a bond that courts and legislatures throughout the country are increasingly recognizing.

In January 2017, Alaska distinguished itself as the first state to require courts to consider the “well-being” of pets when allocating them in a divorce case. Illinois has now become the second.

Until recently, the Illinois Marriage and Dissolution of Marriage Act (“Act”) had been silent as to specific references to pets. As a result, pets have been allocated as personal property in a divorce, just like the furniture, automobiles and appliances of a marriage. On January 1, 2018, all of that changed.

The Illinois General Assembly created a new class of personal property with respect to pets, specifically requiring a consideration of their well-being. Although the language of the statute still refers to pets as “assets” and makes reference to ownership, the Act now instructs that the court “shall take into consideration the well-being of the companion animal.” 750 ILCS 5/501(f), 503(n)(Emphasis added).

While the Act does not go so far as to use the words “custody” or “best interests” in referring to the allocation of pets, consideration for the welfare of the animals is a significant departure from the way all other property is treated under Illinois law. For instance, courts do not consider which party will get more regular oil changes when it allocates a car, nor who rinses the dishes more thoroughly when allocating a dishwasher.

While this is not quite “custody,” the Court can order sole or joint possession, ownership and responsibility, paving the way for visitation arrangements and allocation of pet responsibilities.

The standard for allocating pets, too, is different. For example, when allocating parental responsibilities of children, courts must consider the children’s “best interests.” Well-being is a nod in that direction, but the language and the distinction is material.

The Act exclusively deals with “companion animals,” but it does not define them. However, since it specifically exempts “service animals” as defined under the Humane Care for Animals Act (510 ILCS 70/1 et seq.) (“HCAA”), the HCAA’s definition of a “companion animal” should be considered. Under the HCAA, a companion animal is “an animal that is commonly considered to be, or is considered by the owner to be, a pet. ‘Companion animal’ includes, but is not limited to, canines, felines, and equines.” 510 ILCS 70/2.01a. The Act is silent as to emotional support animals, comfort animals and therapy animals, which are not “service animals” under Title II and Title III of the Americans With Disabilities Act and which are not mentioned in the HCAA.

Parties who are contemplating divorce should be prepared if the possession of the family pet may be contested in the divorce proceeding. Ownership/adoption papers and registrations should be maintained indicating which spouse acquired the pet and also which spouse primarily cared for the pet. Relevant issues to consider may include which spouse takes the pet to veterinary visits or training classes, and who makes arrangements for pet care during vacations, since that spouse may have an advantage in establishing herself as the primary caretaker of the pet. Therefore, maintaining veterinary receipts, health records and training records may provide important documentary evidence.



Erika N. Wyatt

Partner
ewyatt@sdfllaw.com

Additionally, parties who are planning to wed should consider pet allocation in the negotiation of their prenuptial agreements.

While the Act seeks to have courts consider the welfare of pets in their allocation decisions, it will be interesting to see how courts will rule with respect to valuable companion animals, such as horses, which can be worth substantial amounts of money, as well as show dogs and cats.

If you believe the ownership or possession of your companion animal may be contested in your divorce, you should seek an attorney who is experienced and knowledgeable in family law and raise the issue early in order to best position your case for ownership in the dispute.

Maintenance (Alimony) By Formula (continued from cover)

For durations over 20 years, permanent maintenance may be ordered at the Court’s discretion (504 (b – 1)(1)(B)). If maintenance is ordered for a marriage less than 10 years at the time of filing, the Court may make the payment period non-modifiable (b-4.5).

The presumptive maintenance formula uses Gross Income as it is defined in the Child Support Statute (5/505(a)(3)(A) and (3.2)). This includes for each party not only actual gross income from all sources, but “potential” income for those considered under employed or unemployed – a major potential issue for litigation. Then, the formula requires computing 30% of the payor’s gross income and subtracting from that 20% of the payee’s gross income and the difference is paid to the payee, so long as the payee is not receiving over 40% of their combined gross income.

When it does not follow these guidelines, the Court is put in a position of needing to make written findings explaining why it is not following these guidelines. In the findings, the Court must include what the amount and duration of maintenance would have been if the guidelines were used ((b-2)(2)).

The legislature’s purpose for these changes is to streamline the process of setting maintenance and assure uniformity and consistency regardless of what judicial circuit a case is decided in Illinois. While this may be well-intended, it discourages customized decision making to fit the needs and circumstances of the parties whose lives are being affected by the decision. Past experience with child support guidelines shows that Courts routinely follow them and deviations are difficult to get. Now that we have statutory guidelines for maintenance, there is likely to be the same result. Only time will tell if the legislation’s purpose is achieved without too much harm to parties from strict following of mathematical formulas with less emphasis on the individual circumstances and the total picture.

Tax Changes: Whether You Like Them or Not, They Are Here!

The Tax Cuts and Jobs Act ("Act"), passed by Congress on December 20, 2017, contains sweeping changes for individuals, businesses and trusts. It was signed into law by President Trump on December 22, 2017. Except as otherwise noted, all changes are effective in 2018. What follows is a brief checklist highlighting some of the most noteworthy changes made by the Act. The full text of the Act should be consulted for specific details and additional changes.

Individuals

Reduces individual income tax rates ranging from 0 to 4 percentage points (depending on the bracket) to 10%, 12%, 22%, 24%, 32%, 35% and 37% — through 2025.

Near doubling of the standard deduction to \$24,000 (married couples filing jointly), \$18,000 (heads of households), and \$12,000 (singles and married couples filing separately) — through 2025.

Eliminates the deduction for alimony (maintenance) payments under divorce or separation agreements entered into or modified after December 31, 2018. Payments will also not be treated as income for the recipient ex-spouse.

Elimination of personal exemptions — through 2025.

Doubling of the child tax credit to \$2,000 and other modifications intended to help more taxpayers benefit from the credit — through 2025.

Elimination of the individual mandate under the Affordable Care Act requiring taxpayers not covered by a qualifying health plan to pay a penalty — effective for months beginning after December 31, 2018.

Reduction of the Adjusted Gross Income (AGI) threshold for the medical expense deduction to 7.5% for regular and Alternative Minimum Tax purposes — for 2017 and 2018.

New \$10,000 limit on the deduction for state and local taxes (on a combined basis for property and income taxes; \$5,000 for separate filers) — through 2025.

Reduction of the mortgage debt limit for the home mortgage interest deduction to \$750,000 (\$375,000 for separate filers) with certain exceptions — through 2025.

Elimination of the deduction for interest on home equity debt — through 2025.

Elimination of the personal casualty and theft loss deduction (with an exception for federally declared disasters) — through 2025.

Elimination of miscellaneous itemized deductions subject to the 2% floor (such as certain investment expenses, professional fees and unreimbursed employee business expenses) — through 2025.

Elimination of the Adjusted Gross Income-based reduction of certain itemized deductions — through 2025.

Elimination of the moving expense deduction (with an exception for members of the military in certain circumstances) — through 2025.

Expansion of tax-free Section 529 plan distributions to include those used to pay qualifying elementary and secondary school expenses, up to \$10,000 per student per tax year.

Alternative Minimum Tax exemption increase, to \$109,400 for joint filers, \$70,300 for singles and heads of households, and \$54,700 for separate filers — through 2025.

Modification of net operating loss ("NOL") deduction limitations. An NOL carryover or carryback will be limited to 80% of the taxpayer's taxable income for losses arising in taxable years beginning after December 31, 2017. In addition, all carrybacks will be repealed except for a special two-year carryback in the case of certain losses incurred in the trade or business of farming, beginning after 2017. Losses arising in

taxable years beginning after December 31, 2017 will carry over indefinitely.

Doubling of the gift and estate tax exemptions to \$10 million (expected to be \$11.2 million for 2018 with inflation indexing) — through 2025.

Businesses

Replacement of graduated corporate tax rates ranging from 15% to 35% with a flat corporate rate of 21%.

Repeal of the 20% corporate Alternative Minimum Tax.

Creation of a new 20% qualified business income deduction for owners of flow-through entities (such as partnerships, limited liability companies, and S corporations) and sole proprietorships — through 2025. The deduction is subject to several limitations including one based on

50% of wages for taxpayers whose taxable income exceeds \$157,500 (\$315,000 for married filing jointly). The deduction relating to "specified service trade or business" income will phase out to zero for any taxpayer with taxable income in excess of \$207,500 (\$415,000 for married filing jointly). "Specified service trade or business" means any business engaged in performing services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business for which the principal asset of the business is the reputation or skill of one or more of its employees or owners, or a business that involves the performance of services that consist of investing and investment management, trading, or dealing in securities, partnership interests, or commodities. Special rules apply to specified agricultural or horticultural cooperatives.

Doubling of bonus depreciation to 100% and expansion of qualified assets to include used assets— effective for assets acquired and placed in service after September 27, 2017, and before January 1, 2023.

Doubling of the Section 179 expensing limit to \$1 million and increasing of the expensing phase out threshold to \$2.5 million.

Creation of a new disallowance of deductions for net interest expense in excess of 30% of the business's adjusted taxable income (there are exceptions).

Elimination of the Section 199 deduction - also commonly referred to as the domestic production activities deduction or manufacturers' deduction - effective for tax years beginning after December 31, 2017 for noncorporate taxpayers and for tax years beginning after December 31, 2018 for C corporation taxpayers.

Creation of a new rule limiting like-kind exchanges to real property that is not held primarily for sale.

Creation of a new tax credit for employer-paid family and medical leave — through 2019.

Creation of new limitations on excessive employee compensation.

Creation of new limitations on deductions for employee fringe benefits, such as entertainment and, in certain circumstances, meals and transportation. No deduction (50% currently allowed) will be allowed for entertainment, amusement, or recreation activities, facilities, or membership dues relating to such activities. The 50% deduction is retained for meal expenses associated with operating the trade or business.



Carlton R. Marcyan

Senior Partner
cmarcyan@sdfllaw.com

IN THE NEWS

Brett Buckley's article "Nasty divorce litigation opens doors to threat of cyber exposure" was published in the Chicago Daily Law Bulletin.

Jason Sposeep presented for the Fred Lane 40 Hour Mediation Certificate Course on Mediation in Family Law on October 19, 2017. He also co-presented the CLE "Collaborative Process Act: A New Beginning" on October 24, 2017. Jason also spoke to the Supreme Court Committee on Professional Responsibility on Friday, December 15 on the topic of Collaborative Law and the passage of the Uniform Act.

Schiller DuCanto & Fleck LLP was ranked as a Tier 1 Family Law firm in Chicago by Best Lawyers in America 2018.

Adam Zebelian spoke about the unique challenges faced by LGBTQ victims and survivors of domestic violence at Professor Pamela Paziotopoulos's class "Intimate Partner Violence" at Chicago-Kent College of Law. He also presented the Unity Award to Judge Abner J. Mikva posthumously at the 2017 Unity Award Dinner.

Patrick Ryan's blogs "New Tax Legislation", "The Possible Impact to Employee Benefits Under the Proposed 'Tax Cuts and Jobs Act'" and "Senate Bill and House Amendments" were published on our Family Law Topics blog.

Donald Schiller presented the American Academy of Matrimonial Lawyers Foundation 2017 Leonard Loeb Scholarship to law student Tiffany Fameree. Donald's article "Maintenance, child support reform sounds good, but it's complicated" was also published in the Chicago Daily Law Bulletin.

Michele Jochner was invited to judge the final round of the 2017 Chicago Bar Association Young Lawyer's Section Moot Court Competition. She also presented "Appellate Issues in Family Law" to the Chicago Bar Association's YLS Family Law Committee on December 6, 2017. Michele also presented "Prenuptial/Post-Nuptial Agreements and Business Assets Dissipation Proceedings" at the Illinois State Bar Association's seminar on Business Divorce on January 18, 2018.

Jessica Bank Interlandi's article "Tax bill may upset spousal maintenance" was published in the Chicago Daily Law Bulletin.

Erika Wyatt was interviewed by the Chicago Sun-Times for the article "Divorce Court judges can now ask, who's a good pet owner?" She was also interviewed by the Illinois News Network for the article "New Illinois divorce law would give pet custody to better owner." Erika was also interviewed on Fox News regarding pet custody.

Thomas Villanti presented on direct and cross examination of experts in a family law case to the YLS Family Law section of the Chicago Bar Association on January 3, 2018.

Anita Ventrelli's blog "Legal Fee Savvy" was published on our Family Law Topics blog.

Brian Schroder's article "Grandparent adoption can leave other set of grandparents out" was published in the Chicago Daily Law Bulletin.

Eric Pfanenstiel was installed as the President of the DuPage Children's Museum Next Gen Board.

Eric Schulman's article "What to do with Bonuses, Commissions, and other Variable Income" was published in the Lake County Bar Association's January issue of The Docket.



Congratulations to
our new Partners,
Leslie Arenson,
Eric Pfanenstiel and
Evan Whitfield!

The materials contained in this Newsletter are intended for general informational purposes only and not to be construed as legal advice or opinion.

Michele M. Jochner, Editor / Burton S. Hochberg, Co-Editor / Brittany Heitz Goodlett, Co-Editor / Justine E. Robinson, Layout/Design

**SCHILLER
DUCANTO
& FLECK** LLP

CHICAGO
LAKE FOREST
WHEATON

sdflaw.com

200 North LaSalle Street
30th Floor
Chicago, IL 60601-1089

(312) 641-5560 Phone
(312) 641-6361 Fax

One Conway Park
100 North Field Drive, Suite 160
Lake Forest, IL 60045-1973

(847) 615-8300 Phone
(847) 615-8284 Fax

310 South County Farm Road
Suite 300
Wheaton, IL 60187-2477

(630) 665-5800 Phone
(630) 665-6082 Fax