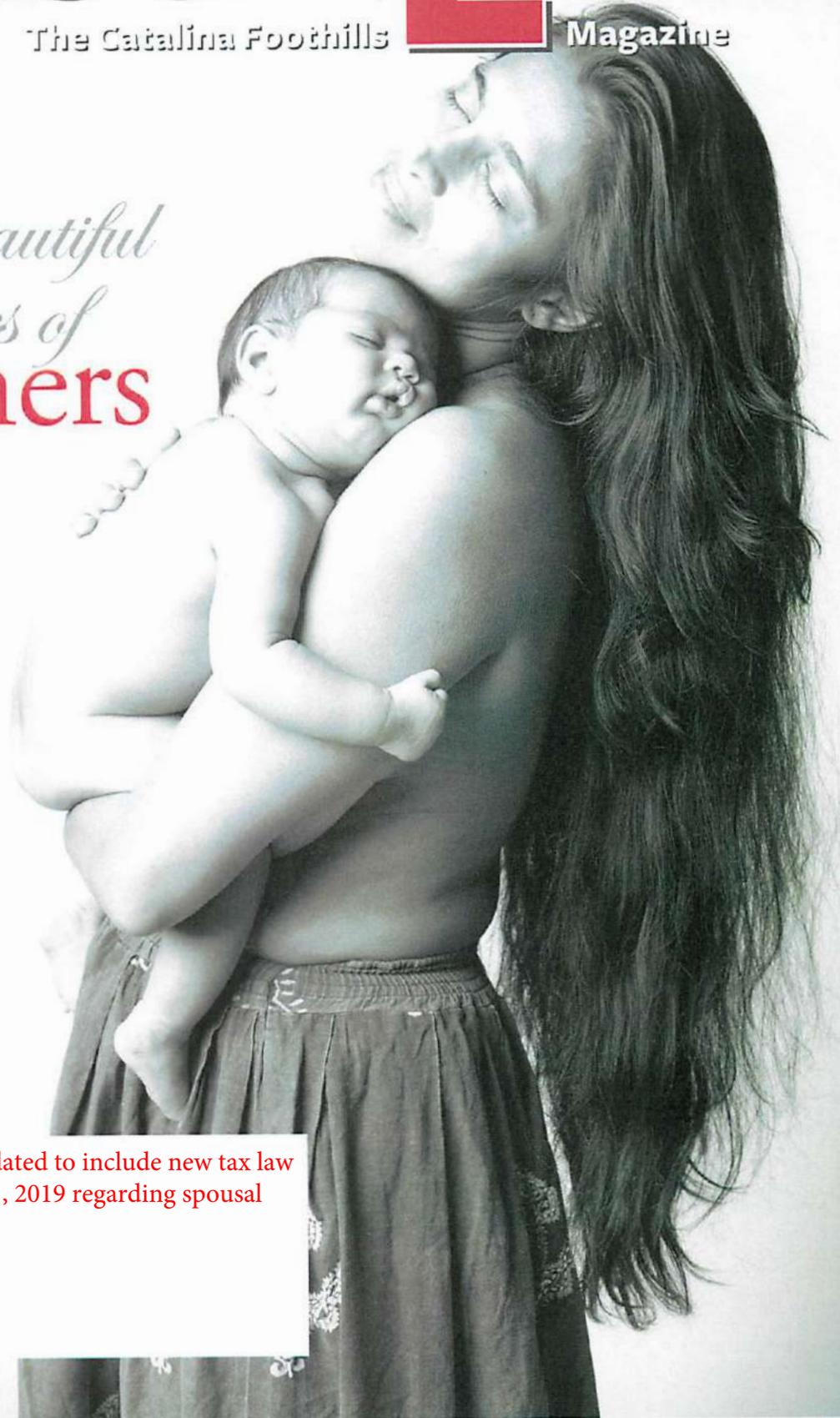


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# Desert Leaf

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## *The Beautiful Bodies of Mothers*



\*\*This article has been updated to include new tax law changes effective January 1, 2019 regarding spousal maintenance

## SPOUSAL MAINTENANCE

**What is Spousal Support?** Spousal support (alimony) is money paid by one spouse to the other in order to assist the recipient spouse achieve financial independence, if possible, and to recognize the recipient's contributions to the marriage. It is not meant as a "parting gift" or "reparations" or a "good sport award" to reward a spouse for enduring a long marriage. Even reprehensible marital misconduct such as adultery will not affect spousal maintenance.

**Who qualifies?** As long as you are married, there are lots of ways to qualify for spousal maintenance. You must have (1) either insufficient property or earning capacity to provide for your reasonable needs; or (2) have custody of a child under circumstances that would preclude employment; or (3) contributed to your spouse's education, training or career opportunities; or (4) been married for a long time and you are of an age where self sufficiency through employment is unrealistic; or you have been married a long time and are of an age where self sufficiency through employment is unrealistic; or (5) you significantly reduced your income or career opportunities for the benefit of your spouse.

**Is there a set amount and duration?** No. Spousal maintenance can be the most difficult part of a case to predict. There are no formulas, guidelines or rules of thumb. The judge decides who receives maintenance, how much, and for how long. You could give the same spousal maintenance case to five judges and get five different results - and all five would likely be correct.

**So what does the Judge consider in deciding the amount and duration?** At least twelve factors including length of marriage, your standard of living, your and your spouse's ages, physical and emotional conditions, comparative resources, work history and earning ability, whether one person sacrificed career opportunities or made contributions to the other's career, the time necessary to obtain sufficient training to permit appropriate employment, the recipient's ability to pay for your children's future education, whether there were excessive or abnormal expenditures by the payor, and the cost of medical insurance. That's a lot of ingredients any one of which can alter the result. It's no wonder that the whole concept of spousal support generates so much anxiety for both parties.

**Who gets taxed?** Starting with agreements or decrees entered on January 1, 2019 or afterward, spousal maintenance is not deductible by the payor and not included in the payee's income.

**What if my spouse quits his or her job to avoid paying me?** You do not escape paying spousal maintenance by retiring, quitting your job, or intentionally

earning less money. Spousal maintenance is awarded based upon earning capacity of both parties, not actual earnings.

**Can the Court award maintenance prior to the divorce being final?** Yes.

**Can the amount or duration be changed.** Yes. Absent agreement of both spouses the amount and duration can always be changed if there is a substantial and continuing change of circumstances.

**Does death or remarriage end support?** Unless otherwise agreed, death of either party or remarriage by the recipient both automatically terminate spousal maintenance.

**Does a short marriage mean no support?** No. This is a common myth. Although support is more common in marriages exceeding ten years, there is no minimum time requirement.

**What if he/she refuses to pay?** Payment is not optional. Failure to pay incurs a wide range of penalties ranging from wage assignments, contempt of court, 10% interest, fines and even jail time.