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## Family Law Issues in Agriculture: Spousal Support

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Spousal maintenance in some states is formulaic, while others rely on case law. In either scenario, there needs to be a determination of income (not assets). For most involved in farming and ranching or other kinds of agri-business, determining income is anything but straightforward. Typically, a spouse is required to pay for his/her health insurance after the divorce, but if he/she has serious medical issues, then this can be a negotiated add-on.

### The Formula

The equation for calculating spousal support does vary from state to state. In some states, like New York, an income cap is used. Nearly every state has “deviation factors” that allow the court to adjust spousal maintenance either upwards or downwards based on the statutory factors (e.g., standard of living during the marriage, medical issues). Some states do not have a formula but looks at the circumstances in that case.

Business owners, including farmers, ranchers, and food entrepreneurs, do not have straight-forward income. Accelerated depreciation, prepays, and other deductions can be added back to the Payor’s income for the purposes of this equation. Courts typically have discretion on these adjustments. If the farm or agri-business pays for living expenses, such as housing, mobile phone, vehicle expenses, food/entertainment, then the court can also input this as income for spousal support purposes.

As one can imagine, this can become a problematic calculation for business owners because it requires a thorough review of tax returns and other business financials. Farmers, ranchers, and agri-business owners are advised to consult a family law attorney with food and agriculture background to help negotiate a fair agreement for spousal support to fit the specific circumstances.

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## Duration

Duration of spousal maintenance is also a negotiated point. Some states, like Illinois, have memorialized durations based on the number of years of marriage up to 20 years. At this point, the Payee should receive maintenance for the length of the marriage or for an indefinite term. Other states, like New York, have set forth ranges, giving the court discretion (e.g., if the marriage is less than 15 years, then maintenance will be between 15% to 30%, depending on the length of the marriage). Other states rely on case law and give the trial judge wide discretion. Importantly, permanent maintenance (i.e., alimony) is uncommon in most states with limited exceptions. Most states prefer durational maintenance (i.e., maintenance for a duration).

Spousal maintenance typically terminates in the following instances:

- Upon the death of the Payor;
- Upon the death of the Payee;
- Upon the end of the specified duration (e.g., 5 years, 10 years)

Cohabitation is more than just having a significant other. It is living with one another in a conjugal relationship and sharing expenses, much like a married couple would. There is a myriad of other factors the court considers and, again, this can vary from state to state.

## Using Life Insurance to Secure Maintenance

Life insurance can be used as payment security for spousal support payments in the event of death. This is oftentimes a negotiated point; it can be ordered by the Court, but it is usually voluntary. Term life insurance is used in these instances and the required amount can decrease each year and as the necessary maintenance decreases. This may also be done for child support, if applicable.

*For more information:*

Cari B. Rincker et al., ONWARD AND UPWARD: GUIDE FOR GETTING THROUGH NEW YORK DIVORCE AND FAMILY LAW ISSUES (2015) available at <https://www.amazon.com/Onward-Upward-Getting-Through-Divorce/dp/0692556540>

Cari B. Rincker, “I’m Talking About the Big D and I Don’t Mean Dallas” (May 2019), available at <https://www.slideshare.net/rinckerlaw/im-talking-about-the-big-d-family-law-issues-in-agriculture>

American Academy of Matrimonial Lawyers, Online Book store, available at <https://aaml.org/store/ListProducts.aspx?catid=704530>

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