

The Danger of Waiving Your Right to Modify Spousal Support

In divorce cases involving spousal support, your spouse or his or her attorney may ask you to waive your right to modify spousal support in the future. Some lawyers call this a “*Staple* waiver” named after the case that created the law – *Staple v Staple*, 241 Mich App 562; 616 NW2d 219 (2000). Such waivers are extremely dangerous, however, and they should not be entered into without first consulting with qualified legal counsel.

If you do not waive your right to modify spousal support, a court will have the authority to modify the spousal support award in the future. This right to modify is important because if you lose your job, become injured or ill, or experience any other misfortune that reduces your income, you can always go back to the court and ask the judge to reduce or even eliminate your spousal support obligation. However, if you have waived your right to modify, and at some time in the future you experience a reduction in income for whatever reason, your former spouse can force you to continue paying spousal support, and your former spouse can even request that the court put you in jail for not paying spousal support no matter how good your reason is for not paying. Thus, your right to modify the spousal support award is extremely important because, as we all know, none of us has absolute control over our future nor can we know exactly what the future holds for us.

Despite the importance of the right to modify a spousal support award, in *Staple v Staple*, 241 Mich App 562; 616 NW2d 219 (2000), the Michigan Court of Appeals ruled that a spouse is allowed to waive his or her right to request the court to modify a spousal support award. For a waiver to be enforceable, such a waiver “must clearly and unambiguously set forth that the parties (1) forgo their statutory right to petition the court for modification and (2) agree that the spousal support provision is final, binding, and nonmodifiable.” *Staple*, 241 Mich App at 581. It is now fairly common for a spouse’s attorney to include such language in the Judgment of Divorce. If the spousal support section of the Judgment of Divorce indicates that you are waiving your right to petition the court for modification of the spousal support award or contains language such as “final, binding, and nonmodifiable,” then you may be forever waiving your right to ask the court to reduce your spousal support obligation and you may later regret this decision if your income ever changes.

If you have already waived your right to modify a spousal support award, there may still be hope. If there was no discussion in court regarding the modifiability of the spousal support award or no indication that anyone explained to you the effect of waiving your right to modify the award, then your waiver may be invalid, and you may be able to have it set aside. Or, if your Judgment of Divorce does not specifically declare that you were forgoing your right to modify the spousal support award or does not state that the spousal support award is final, binding and nonmodifiable, you may also be able to have your waiver set aside.

Only a qualified family law attorney can tell you whether a *Staple* waiver is right for you or if you have validly waived your right to request the court to modify a spousal support

award. For further information regarding your right to modify your spousal support obligation, contact our office to schedule a confidential consultation.

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