



## **MODIFICATION OF SPOUSAL MAINTENANCE**

Husband and wife entered into a property settlement agreement as part of their Consent Decree and contained a provision regarding modification of spousal maintenance. The trial court entered an order modifying wife's spousal maintenance from \$6,666.00 to \$4,250.00. The basis of the court's modification was the modification clause in the property settlement agreement as for deferred compensation along with her salary and bonus, exceeded \$50,000.00, thereby meeting the parties criteria for a proposed modification. The Court did note that interest, dividends and wife's 401(K) should not be considered for purposes of the modification as set forth in the property settlement agreement clause. *MacMillan v. Swartz*, 1 CA-CV 10-0262. Although wife claimed that the trial court should have taken into consideration the higher standard of living that she enjoyed during the marriage, the Appellate Court noted:

When a court determines whether the amount and duration of spousal maintenance is adequate, it must consider the standard of living established during the marriage. A.R.S. §25-319(B)(1). *Rainwater v. Rainwater*, 177 Ariz. 500, 502 869 P.2d, 176, 178 (App. 1993).

The *MacMillan* Court went on to conclude that "implicit in the agreement is the relevant standard of living for determining spousal maintenance. Because that agreement was incorporated into the Decree, wife is contractually bound by its terms."

In summary, it is important to consider that if the property and maintenance awarded to a spouse does not meet their standard living enjoyed during the marriage there should be a provision in the property settlement agreement or the consent decree.