



**MYBURGH
ATTORNEYS
INCORPORATED**

ARE YOU A VICTIM OF DOMESTIC VIOLENCE? WHAT CAN YOU DO TO PROTECT YOURSELF?

WHAT IS DOMESTIC VIOLENCE?

Any controlling or abusive behaviour which harms your health, safety or wellbeing or the health, safety or well-being of a child, committed within the framework of a family. A family means anyone who is a person in a domestic relationship such as married persons (married according to any law or custom) who live together as husband and wife. It includes people living together in a relationship similar to marriage as well as parties who are of the same sex and that are / were dating, engaged or in a customary relationship. It also includes children in any “family” set-up.

It includes physical abuse or threat of physical abuse; emotional, verbal and psychological abuse; economic abuse; sexual abuse; intimidation; harassment; stalking; damage to or destruction of property or entry into your residence without consent.

REMEMBER TO TAKE PHOTO'S OF YOUR INJURIES IF THERE WAS PHYSICAL ABUSE AND TO KEEP RECORD OF THE NUMBER OF TIMES THAT THE ABUSE OCCURRED AND ALSO WHEN IT OCCURRED.

How can you deal with Domestic Violence?

1. You can take preventative measures to stop the violence by getting a Protection Order against the person who is abusing you; or
2. The person that abused you will be prosecuted criminally for his / her violent offences. It is a crime to assault, intimidate or abuse someone physically or sexually. In this instance the party who has been or is being abused must report this to the police. A charge will be laid against the abusing party and The State will continue to prosecute him / her in a Criminal Court. The wrongdoer may be sentenced to prison or a fine may be imposed upon him.

Which Act regulates Domestic Violence?

The Domestic Violence Amendment Act 14 of 2021 makes provision for a person who is being abused to apply to the Magistrate's Court for a Protection Order. This is done on Application and must be granted by a Magistrate.

Who can apply for a Protection Order?

An order may be requested by anyone who shares or shared the same household or residence with the respondent (abusing party).



An application for a Protection Order can be brought on behalf of the applicant by any other person with the applicant's consent. A child may also apply for a Protection Order without the assistance of his / her guardian.

What is the procedure?

- STEP 1: You must approach the Clerk of the Magistrate's Court, closest to where you work or live and complete and sign a Form 1 which sets out the abusive actions that must be stopped. It is important to have your attorney present as there are certain allegations that you must make in your application and affidavit.
- STEP 2: The Clerk of the Court will submit the application and affidavits to the Court.
- STEP 3: The Court hears the Application.

If the Court is satisfied, it will grant an Interim Order with a return date on which the respondent (the abusing party) must show cause why the Interim Order should not be confirmed.

The Interim Order must be served on the respondent by the Sheriff, Clerk or Peace Officer of the Court. If an order is not properly served, then it is invalid. The State will give financial assistance to parties who do not have the financial means to pay for service of the order themselves. The cost of service varies in different areas. The minimum cost will be R42.00 and will escalate according to the distance that the Sheriff must travel.

A Warrant of Arrest will also be issued by the Clerk for the arrest of the respondent if he / she contravenes the Interim Order. The Clerk of the Court will send copies of the Protection order to the relevant parties as well as copies of the Protection order and the Warrant of Arrest to a police station of the applicant's choice.

The applicant will be protected throughout the procedure as he / she does not have to supply their address on the Protection order.

When does the Protection Order expire?

The Order will have force until the applicant freely and voluntarily applies for the amendment or setting aside thereof. It may also be set aside at the hearing on the Return date if good cause is shown by the respondent why it should not be confirmed.

What other remedies do you have?

1. You can apply for a Peace order at a Magistrate's Court.
2. Divorce is also an option should the violence / abuse be continuous.

Who can you talk to about Domestic Violence?

NICRO: 021 422 1690

SAPS Family Violence, Child protection and Sexual Offences Unit: 012 393 2363

Woman Abuse Helpline: 0800 150 150

Childline: 0800 055 555

It is always better to consult with an experience attorney and ensure that your attorney explains everything to you in detail until you understand.

This information is only meant to be used as a guideline.

Consult your attorney.