



## **WHAT ARE YOUR RIGHTS WHEN IT COMES TO MAINTENANCE?**

### **WHAT ARE YOUR OPTIONS?**

Families are a vital component of our society. As family members we have a duty towards one another to ensure that the family that we lead a happy and safe existence. However, this principal is not always followed.

Therefore, it is necessary to put laws in place in order to ensure that people fulfil their duty towards others and in particular that parents maintain and look after their children. Maintenance is regulated by the Maintenance Act, Act 99 of 1998.

### **What is maintenance, who should pay maintenance and who should receive maintenance?**

The duty of maintenance is determined according to blood relationship, marriage or adoption. It includes the obligation to provide another person, e.g. a minor, with the necessary support and necessities needed for a proper upbringing and life. When children are involved, there is a duty to support in the following cases:

- By both parents of a child born in wedlock (marriage);
- By both parents of a child born out of wedlock;
- If someone dies then that person's estate is liable, whether the parents were married or not;
- In certain matters, the grandparents or siblings of the child.

Your children's rights to maintenance are not dependent on your view of the other parent's lifestyle and behaviour. You are still obliged to pay maintenance even if that person gets remarried or is involved in a serious relationship with someone else.

There is also a distinction between your obligation to pay maintenance and your right to see your child or have access to them.

### **How to institute a claim for maintenance?**

When wanting to claim maintenance, a maintenance investigation will begin by the lodging of a complaint with the maintenance officer at your local Magistrates Court. The maintenance officers will investigate each case and its merits. Once this is done a summons to appear before the court is served on the person against whom the complaint was made. This person can either agree to the claim and pay the requested maintenance, or can contest the matter in court.

If consent is obtained with regards to paying the maintenance which has been claimed, it will result in a Magistrate making an appropriate order.

However, If the matter is contested then both parties need to appear in court, where evidence will be heard. After hearing all evidence, the Court will make a decision as to whether the party is liable to pay maintenance and when and how such payments are to be made.

## **What am I able to claim as maintenance?**

The duty of support varies from case to case but is in general the commitment to ensure that enough support is provided so that that person/s (for eg. children or spouses/partners) may live properly and have a decent upbringing. It also includes providing basic necessities such as the following:

- Food;
- Clothing;
- Housing;
- Education (including tertiary education);
- Medical Services and Expenses.

When determining what a fair maintenance order is, the courts require that both parties provide the court with proof of their income and expenses.

## **Can a maintenance order be changed?**

The local Magistrates Court can be approached to have a maintenance order amended. This can be done if the amount of maintenance you are receiving is no longer sufficient. If you have a maintenance order against you and you pay maintenance and can no longer afford to pay the amount, you may approach the court in the district where the person to whom maintenance is paid, lives.

An application form in which you set out your income and expenditure as well as the reasons for your application must be completed. The investigation process will then once again be started (see above).

## **What happens if I do not receive maintenance on the specific date?**

The courts cannot take action unless a complaint under oath is lodged with the maintenance officer. Once a complaint is lodged the process will start.

## **How do I enforce a maintenance order?**

Maintenance is regarded as a serious duty and therefore failing to pay maintenance constitutes a criminal offence. You can however enforce a maintenance order without enforcing criminal proceedings. If money is owed to you in terms of a maintenance order you can approach the court to attach the debt (unpaid maintenance and interest) to the non-payer's salary and benefits, execution and sale of his / her property or by attaching debts which are owed to such person.

## **Is it necessary to have a legal representative?**

You have the choice as to whether you require legal representation. Always remember that Legal representatives in this field will be able to give you accurate legal advice and will be able to assist you through the process, a process which is often time consuming and frustrating due to the number of maintenance matters currently being dealt with by our courts.

*Don't evade your responsibility to support your child!!!*

*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.*

