

ARE YOU A VICTIM OF DOMESTIC VIOLENCE?

Domestic Violence is regarded as a serious social evil and South Africa is one of the countries with high incidences of domestic violence. The Domestic Violence Act, 1998 (Act 116 of 1998) was enacted with the main purpose to afford the victims of domestic violence maximum protection from domestic abuse that the law can provide. The Act further introduced measures which seek to ensure that relevant organs of state give full effect to the provisions of this Act, and thereby to convey a message that the State is committed to the elimination of domestic violence

WHAT IS DOMESTIC VIOLENCE?

In general, domestic violence may:

- Be an on-going pattern of coercive control
- Increase in severity over time

Be complicated due to the fact that a victim and perpetrator often share financial, social and familial tie

Forms of abuse in terms of the Domestic Violence Act

Physical Abuse may include:

- Shoving, slapping, punching, kicking, throttling, biting
- Assault with objects, guns, knives or any other dangerous weapon

Sexual Abuse may include:

- Rape, attempted rape, indecent assault
- On-going verbal abuse with sexual slurs such as bitch, whore, slut, etc.





Both men and women can be guilty of, and be victims of domestic violence.

WHO CAN APPLY FOR A PROTECTION ORDER?

- Any person who is a victim of an act of domestic violence may apply to a court for a protection order
- An application may also be brought by any person who has a material interest in the wellbeing of a complainant e.g. parent, social worker, teacher etc.
- Any unassisted minor or any person on behalf of a minor may apply for a protection order.
- An application may be heard in camera (private)
- A complainant/respondent may be allowed not more than three persons for the purpose of providing support.
- A protection order is valid for life and is enforceable throughout South Africa.

AGAINST WHOM MAY YOU SEEK A PROTECTION?

It must be a person that you have a domestic relationship with, e.g.

- A person to whom you are married, whether by civil or customary rites;
- Your partner (whether of the same or opposite sex) who lives or has lived together with you, even though you were not married to each other or are not able to be married to each other (if, for example, one of you was already married to someone else);
- The other parent of your child or persons who share parental responsibility with you for a child;
- Persons who are related to you by blood ties, marriage or adoption;
- A person with whom you shared an engagement, customary or dating relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration (e.g. one night stand)
- A person with whom you share or have recently shared the same residence.

WHAT MUST YOU DO?

If you are a victim of any act of domestic violence as listed above, approach a local magistrate's court and request assistance to apply for a protection order. A clerk of the court will assist you to complete the necessary forms and take you before a magistrate who will determine whether to grant an interim protection order or not.

WHICH COURT SHOULD YOU APPROACH?

Approach a nearest court where you live or work. If you were forced to leave your place of residence as a result of violence and you are now living elsewhere temporarily, you may approach a court closest to your temporary residence.

Emotional, Verbal and Psychological Abuse may include:

- Constant insults, ridicule or name calling
- Repeated threats of violence or death to cause emotional pain

Economic Abuse may include:

- Selling of shared property e.g. livestock, matrimonial house without the consent of a victim
- Accessing a joint bank account for personal use without the consent of a victim

Intimidation could be:

- Sending written or verbal death threats to a victim
- Sending beheaded dolls, small coffins, dead flowers or dead pets to a victim

Harassment may include:

- Repeatedly watching a victim outside or near his/her house, workplace, school or business premises or any place where she happens to be
- Repeatedly phoning a victim or causing any other person to phone his/her whether or not the caller speaks to a complainant

Stalking means, for example:

- Constantly approaching a victim and asking or demanding to talk to a victim against his/her will

Damage to Property may include acts of:

- Breaking a window to gain entry into a victim's house
- Cutting, breaking or damaging in any other manner shared furniture

Unauthorised Entry into the Victim's Residence may include:

- Using a duplicate key to gain access may also constitute domestic violence

WHAT IS AN AFFIDAVIT?

An affidavit is a statement made under oath. This means that a person who is making a statement has sworn to speak the truth and is aware that he/she will be prosecuted if it is found that contents (or parts thereof) of an affidavit are untrue. It is a punishable offence in a court of law to make a false statement.

WHEN CAN YOU APPLY FOR AN INTERIM PROTECTION ORDER?

If a respondent is committing any acts of domestic violence you may apply for a protection order, a court will consider your application and if a court is satisfied that there is sufficient evidence that:

- a. A respondent is committing or has committed an act of domestic violence and;
- b. Undue hardship may be suffered by an applicant as a result of such domestic violence if an interim protection order is not issued immediately.

WHAT WILL AN INTERIM PROTECTION ORDER STATE?

An interim protection order will request a respondent (a person who is committing the abuse) not to abuse an applicant in a specific manner alleged in an affidavit e.g.

“an order that a respondent not to sexually abuse you or the children”

In extreme cases, a magistrate may consider it appropriate to prohibit a respondent from entering the shared house or certain areas of the shared house e.g. your bedroom.

If children are victims of abuse, a court may order that a respondent has no or limited contact with the children.

A court may make an order for emergency monetary relief. This means that if you need to claim medical expenses or alternate accommodation costs which arose directly as a result of the abuse, you must provide proof of the expenses incurred and request a court to

consider the application.

A court may order the police to seize a respondent's firearm if he/she has made any threat on your life.

To fully appreciate the nature of the alleged abuse, a court relies on your affidavit. You must therefore provide a court with all the relevant information in your affidavit, for example, details of the incidents of abuse, date, place and nature of the last incident.

A court may not refuse to issue a protection order; or to impose any condition or make any order which

is competent to impose or make merely on the grounds that other legal remedies are available to a complainant.

WHAT DO YOU DO WITH AN INTERIM PROTECTION ORDER?

An interim protection order must be served to a respondent as soon as possible. You cannot personally serve the order to a respondent as this will not constitute proper service. In other words, handing over an interim protection order is the responsibility of someone in an official capacity such as a police officer or sheriff.

You must take an interim protection order to the Office of the Sheriff or to a nearest police station to a respondent's residential or work address. At a police station, please remember to take down the name and/or badge number of a police officer to whom you hand an order.

This enables you to easily track an order at a later stage. Most police stations have a designated official to handle domestic violence matters.

Arrange with a police officer to collect the Return of Service (Proof of Service). This proves that an interim protection order has been served on a respondent and that he/she personally received it. Do not arrange for a police officer to deliver or post the Return of Service directly to a court as this is often too slow and does not get to a court before the return date.

Remember that in terms of the law, the police must assist you in whatever manner stipulated in a court order, for example, with the collection of personal belongings, your ID document, children's books or clothes, etc. If you find that a police officer is unhelpful and refuses to cooperate in terms of an order, you may report this to the Independent Police Investigative Directorate (IPID).

NB: Also note that it is not the duty of the police to assist you with the removal of furniture, computers, crockery, etc.



WHAT DO YOU DO WITH THE PROOF OF SERVICE?

You will need to provide a clerk of the court with the proof of service of a protection order as soon as possible. Once a clerk has this document, a suspended warrant of arrest for a respondent will be authorised by a court. This warrant may only be used against a respondent for any future violations of a protection order

WHAT IS A RETURN DATE?

Is a date set so as to allow a respondent an opportunity to show why a final order should not be granted against him/her.

WHAT HAPPENS ON THE RETURN DATE?

A court must hear the matter, and consider any evidence or any affidavit as well as oral evidence. If a court is satisfied on balance of probabilities that a respondent has committed or is committing an act of domestic violence, a protection order must be issued.

WILL A RESPONDENT BE ARRESTED WITH A PROTECTION ORDER?

A respondent will not be arrested upon service of a protection order. It is only upon a breach of the terms of an order that a respondent may be arrested.

WHAT IS CONTEMPT OF COURT?

It is when a respondent, who has breached an order, has failed to appear in a criminal court to answer charges filed against him/her.

WHAT IS A BREACH OF A PROTECTION ORDER?

It is when a respondent fails to comply with the conditions of a protection order, e.g. when he/she repeats an abusive behaviour that, according to a protection order served; he/she has been prohibited from committing.

WILL THERE BE A FORMAL HEARING?

If a magistrate is unable to make a decision on affidavits presented to him/her because of a conflict of facts between your version and a

respondent's version, i.e. if there is a dispute in the information given by both parties, a magistrate will postpone the matter for a formal hearing.

At a hearing, both parties will be required to give oral evidence under oath and to be cross-examined by the other party. However, a respondent is only allowed to ask a complainant questions via his/her attorney or a magistrate. Both parties may call witnesses to give any other supporting evidence that they need to prove their case, for example, medical certificates, hospital records, photographs, documents, etc.

WHAT IF A PROTECTION ORDER IS BREACHED?

If a respondent breaches a protection order by continuing to subject you to any form of abuse described at the beginning of this brochure, you may lay a criminal charge at a nearest police station and hand in a warrant of arrest to the police who will then arrest a respondent.

Remember, however, that if a court finds that a warrant of arrest is used maliciously (to have a respondent arrested without just cause), then you may be prosecuted in terms of the Act.

CAN THE CRIMINAL CHARGES BE WITHDRAWN?

Once a respondent has been arrested for a breach of a protection order, an applicant may not decide to withdraw the charges. The Director of Public Prosecution or a senior member of the National Prosecuting Authority (NPA) designated thereto by such Director has sole discretion to withdraw charges.

CAN I SET ASIDE AN ORDER?

You may, at any time, make an application to have an order set aside. It is however, at a discretion of a court as to whether or not to set aside an order. This will mean that a protection order will be declared null and void.

FOR MORE INFORMATION PLEASE CONTACT:

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