

# QUICKLAW

ANSWERS YOUR QUESTIONS

## MAINTENANCE

### What is maintenance?

This is an amount of money that someone, who by law has a duty of support towards another person, must pay to that person on a monthly basis. An example would be that the father of a child has a legal duty to support his child taking into account his financial position as well as the specific needs of the child. Both parents have an equal duty to financially support their children.

### Who is entitled to receive maintenance?

- All children are entitled to receive maintenance from their natural parents regardless of whether the child is born during a marriage or not.
- Adopted children are entitled to maintenance from their adoptive parents and not their natural parents.
- Parents can also claim maintenance from their children if they have no or little income and only if the child has the financial means to pay maintenance.

### Can partners claim maintenance from each other?

- Partners in customary, civil and religious marriages have a duty to support each other.
- Partners in life-long same sex relationships may claim maintenance from each other.

### Who can lodge a claim for maintenance on behalf of a child?

- Parents, guardians and curators can claim maintenance on behalf of children.

### What is included in a claim for maintenance?

- Food, clothing, accommodation, medical care and education, which may include university education.
- The amount of the maintenance is also determined by the standard of living of the parents and their standing in the community.
- In addition to food, clothing and accommodation, provision for electricity, water, linen, cutlery and the washing of clothes should also be taken into account.

### Where should I go in order to claim maintenance?

You may contact the Maintenance Officer at your nearest

Magistrate's Court who will assist you with your application.

### What should I take with me when applying for maintenance?

- Your Identity Document.
- Your home and work addresses and telephone numbers.
- Birth certificate of your child if you are claiming maintenance for the child.
- Your marriage certificate or your divorce order containing the maintenance order if you are claiming maintenance for yourself.
- A full list of your/child's expenses and receipts, eg. proof of payment of child's school clothes & education.
- Your salary slip and a list of any other income you may receive.
- The salary slip and work telephone numbers and address of the person who you are claiming maintenance from, if possible.
- The home address and telephone number of the person who you are claiming maintenance from.
- Proof of any other source of income of the person who you are claiming maintenance from.

### What happens next?

- Make a statement under oath stating the details of your maintenance claim.
- Give the Maintenance Officer all the contact details, financial position, identity, and whereabouts of the person who you are claiming maintenance from.
- If necessary, the Maintenance Officer will subpoena anyone or the Defendant (the person who you are claiming maintenance from) to bring any documents to court to prove the financial position of the Defendant.
- A subpoena will be served on the other party informing him/her of the date, place and time of the informal enquiry.
- A consent form will be attached to the subpoena and if the other party agrees to the maintenance arrangements, he/she can sign it.
- The consent form will be taken back to court to be made an order of court by a Magistrate.

### What happens if the other party has not signed the consent form?

- Both parties must be present at the informal enquiry with the Maintenance Officer.
- The other party will be required to bring along pay slips, bank statements and any other financial information requested by the Maintenance Officer.
- The Maintenance Officer will already have your statement of income and expenses on file.
- The Maintenance Officer may suggest a solution and if accepted by both parties, a consent form must be signed and the Maintenance Officer will ask the Magistrate to make it a court order.
- If you do not come to an agreement at the informal maintenance enquiry and a consent form is not signed the matter will go to court.

### What happens if the other party does not appear at the informal maintenance enquiry?

- If a subpoena was successfully sent to the other party and he/she failed to attend the informal enquiry, the Maintenance Officer may apply for a maintenance order to be made in his/her absence 'by default'.
- A Warrant of Arrest may also be issued for the other party's arrest.

### What will happen if the parties have not reached an agreement at the informal enquiry?

- A court date will be set so that the matter can be heard in the presence of the Magistrate in a court.
- The other party may bring his attorney with him to court.
- The Magistrate will then look at the evidence and make an order regarding how much the other party must pay for the maintenance of the children.
- Once you have been granted an order your file will remain at that court.
- Should you move home, your file can be transferred to the Magistrate's Court in your new area.

### How do I enforce a maintenance order?

- If the person with the maintenance order against them does not make a payment in line with the maintenance order after 10 days you may apply for:
  1. A Warrant of Execution. This means attaching and selling the other party's property eg. furniture, car etc.
  2. Attachment of Emoluments. This means attaching his / her salary for payment of the amount every month.
- The application must be accompanied by a copy of the maintenance order.
- Include a statement under oath stating the amount which the person against whom the order was made has failed to pay.
- Complete a FORM K - available from the Maintenance Court.
- The Clerk of the Court can issue a notice to be served on the other party's employer and tell them to make payments at certain times and in a certain way.

#### KEY:

1. OATH - something declared or promised
2. SUBPOENA - a letter commanding a person to appear in a court of law
3. CURATOR - a person who is by law entrusted to look after a child or incompetent