FAMILY LAW

Unmarried Father

Unmarried fathers have parental rights and responsibilities towards their children. For more information surrounding unmarried fathers, paying maintenance, and making important decisions, read this QuickLaw guide.

Update date: July 2022

For all your parental and unmarried father rights answers, follow our guide below:

1. When can an unmarried father obtain parental rights and responsibilities towards his child?
2. How can an unmarried father obtain parental rights and responsibilities?
3. What factors will the court take into account when considering an application for parental rights and responsibilities?
4. Does an unmarried father have to pay maintenance towards his child?
5. Must an unmarried father be considered when making important decisions regarding his child?
6. How can LegalWise assist you?

1. When can an unmarried father obtain parental rights and responsibilities towards his child?

An unmarried father does not always have automatic parental rights and responsibilities, however, he can obtain parental rights and responsibilities in the following circumstances:

- if he was living with the child's mother at the time of the child's birth; or
- if he, regardless of whether he has or is living with the mother of the child –
    - consents or applies to be identified as the child's father, or pays damages in terms of customary law;

    - contributes or has attempted in good faith to contribute to the child's upbringing for a reasonable period; and
    - contributes or has attempted in good faith to contribute towards expenses in connection with the maintenance of the child for a reasonable period.

2. How can an unmarried father obtain parental rights and responsibilities?

- If the unmarried father and the biological mother of the child cannot come to an agreement on the rights and responsibilities of the unmarried father, he can apply to the:
- Children's Court, for care and/or contact;
- High Court for guardianship; or
- High Court for care, contact and guardianship.

3. What factors will the court take into account when considering an application for parental rights and responsibilities?

- The best interests of the child.
- The relationship between the unmarried father and the child.
- The relationship between any other person and the child, such as the mother.
- The degree of commitment the unmarried father has shown towards the child.
- Whether the unmarried father has contributed or attempted to contribute to the maintenance of the child.
- Any other factor the court considers to be relevant, such as:
    - whether the unmarried father has a history of violence towards children;
    - the effect of separating the child from his/her mother; or
    - the child's attitude towards the relief sought in the application.

4. Does an unmarried father have to pay maintenance towards his child?

Yes, an unmarried father has a duty to maintain his child and the child has a right to be maintained by his/her father. The duty to maintain his child is the only parental responsibility that automatically clings to the unmarried father, regardless of the circumstances.

5. Must an unmarried father be considered when making important decisions regarding his child?

- If an unmarried father was granted guardianship over his child, his consent must be obtained in the following circumstances:
    - the adoption of the child by another person;
    - if the child applies for a passport;
    - the removal of the child from South Africa; or
    - if the child wants to get married

- If an unmarried father was granted contact with his child, the mother of the child must inform him of any change of address immediately. Failure to do so is a criminal offence.

6. How can LegalWise assist you?

If you are a LegalWise Member and require more information or advice please contact your nearest LegalWise Branch, call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

© LegalWise South Africa (RF) (Pty) Ltd. This guide is general legal information, not legal advice. For assistance, call 0861 42 7777 or visit https://www.legalwise.co.za/guides/unwed-father.