

**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.*

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

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### **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.