FAMILY LAW

Domestic Violence And Protection Orders

What is domestic violence and what remedies are available to a complainant? Learn more about domestic violence and protection orders in South Africa by reading this QuickLaw guide.

Date Update: July 2022

For all your domestic violence and protection orders answers, simply follow our guide below:

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1. What is domestic violence?

Domestic violence is where a person (“complainant”) is being harmed by another person (“respondent”) while they are in a domestic relationship.

2. What will be considered to be domestic violence?

- Physical abuse – if the complainant is being physically injured by the respondent, for example, being punched, kicked or pushed.
- Sexual abuse – if the complainant is being forced by the respondent to perform a sexual act, for example, the respondent may force the complainant to have sexual intercourse with him/her.
- Emotional and psychological abuse – if the respondent verbally insults or humiliates the complainant, for example, calling him/her offensive names.
- Economic abuse – if the complainant suffers financial damages caused by the respondent, for example, where the respondent sells household property or uses a joint bank account for personal use without the consent of the complainant.
- Intimidation, harassment or stalking – if the respondent repeatedly follows and watches the complainant, or where the respondent makes unwanted telephone calls or sends unwanted e-mails and text messages to the complainant.
- Property damages – if the respondent damages any property that belongs to the complainant.
- Trespassing – if the respondent enters the complainant's home or property without his/her consent.

3. What is a domestic relationship?

The complainant and respondent will be considered to be in a domestic relationship if they are:

- married to each other according to any law, custom or religion;
- living together in a long-term relationship without being married (cohabitation);
- parents of a child;
- family members related by blood, marriage or adoption;
- dating each other or engaged to each other; or
- staying together in the same home.

4. What remedies are available to a complainant?

A complainant can approach a court to apply for a protection order and s/he can lay a criminal charge/complaint against the respondent at a police station.

5. Who can apply for a protection order in South Africa?

- The complainant can apply for a protection order.

- If the complainant is a child, s/he can apply for a protection order on his/her own and does not have to be assisted by a parent or a guardian.
- It is also possible for a person to make an application for a protection order on behalf of the complainant. This means that any person who has an interest in the wellbeing and safety of the complainant can make an application. If the complainant is older than 18 years of age, the written consent of the complainant is required to make an application on his/her behalf.

6. How can a complainant apply for a protection order?

- An application for a protection order in South Africa can be made at a Magistrate's Court in the area where the complainant or the respondent lives or works, or where the domestic violence happened.
- The complainant will have to complete the necessary application forms, which can be obtained from the clerk of the court.
- The application is in the form of an affidavit and must contain the following information:
    - the facts relating to the domestic violence and any evidence in support thereof, for example, the type of domestic violence, when it happened and medical reports;
    - the type of protection that is applied for, for example, that the respondent should stop abusing the complainant; and
    - the name of the police station where any breach of the protection order will most likely be reported to.

7. What happens after an application for a protection order has been submitted?

- The clerk of the court will take the application to a magistrate.
- If the complainant is in need of urgent protection (such as where his/her life may be in danger), the magistrate must issue an interim protection order.
- An interim protection order is a temporary order that must be delivered to the respondent. The interim protection order will inform the respondent to appear in court on a future date, known as the return date.
- The complainant must also appear in court on the return date.

- On the return date, a hearing will be held at court where the respondent will have to provide reasons why the interim protection order should not be made a final order.
- If the court did not grant an interim protection order, the complainant and respondent will be informed to appear in court on a specified date where a hearing will be held regarding the application for a protection order.
- During the hearing, the court will consider all the circumstances of the matter, such as the facts relating to the domestic violence and any evidence in support thereof, before making a final decision.
- If a final protection order is granted, the clerk of the court must provide certified copies of the protection order to the relevant police station, the complainant and the respondent.
- A final protection order in South Africa remains valid until it is set aside or cancelled by court.

8. What must the respondent do upon receiving an interim protection order in South Africa?

- The respondent must read it and pay specific attention to the page where the return date is indicated. If the return date is unreasonably set in the distant future, s/he may apply at court for an earlier date.
- The respondent can set out his/her defence in an affidavit and attach any documents in support of his/her defence to the affidavit.
- The respondent must appear at court on the return date, failure to do so will result in him/her being in contempt of court (which is a criminal offence) or the court may grant the final protection order in his/her absence.
- The respondent must adhere to the terms and conditions set out in the interim protection order, such as not to be in contact with the complainant.

9. How can a protection order be enforced?

If the court grants an interim or final protection order, a warrant of arrest will also be issued and provided to the complainant. If the respondent breaches the terms and conditions set out in the protection order, the complainant must report the breach to the police and the respondent can be arrested in terms of the warrant of arrest.

10. How can a protection order be cancelled or changed?

- The complainant or respondent can apply to court to cancel or change a protection order, upon providing a good reason.
- Written notice of such an application must be given to the court and the other person.

11. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, 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.

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