



FAMILY LIFE CENTRE

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MAINTENANCE YOU, ME AND OUR CHILDREN

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Family and Marriage Society of South Africa

Alexandra	c/o 833-2057
City Centre	833-2057
Coronationville (Bosmont/Westbury)	477-5531
Diepsloot	c/o 788-4784/5
Lenasia South (Ennerdale/ Finetown)	855-2359
Soweto	986-3290

MAINTENANCE FOR CHILDREN

The financial support of children is the legal and moral duty of both parents, even if they were never married. Such a duty of support is based on the following:

- the relationship between the child and the parent;
- the need of the child to receive financial support;
- the ability of the parent to pay;
- the best interests of the child.



What is maintenance for?

Every child has the right to reasonable maintenance to provide:

- Housing
- Clothing
- Medical, dental and health care
- Education
- Food

How long do you have to pay maintenance?

The duty of support usually ends when the child becomes self-supporting, which may or may

not be when the child reaches 21. As long as the child needs financial support, the parents are obliged to pay maintenance.

MAINTENANCE FOR A SPOUSE

The factors that are important in considering maintenance for a spouse are:

- the existing or future means of the parties;
- the parties' earning ability;
- the parties' financial needs and obligations;
- the age of the parties;
- the duration of the marriage:
 - The longer the marriage, the more difficult it may be for a spouse, usually the wife, to re-enter the workplace and earn a living.
- the standard of living before the divorce:
 - In the majority of cases, it is not possible for the parties to maintain their standard of living after divorce.

The courts prefer the "clean-break" principle in which the parties are financially independent after the divorce.

How long does the one spouse have to pay maintenance to the other?

This depends on the order made by the court but there are a number of possibilities:

1. Rehabilitative maintenance

This is maintenance which is paid until the spouse in need is able to find employment which can support him/her or has acquired the skills necessary to enter the workplace.

2. Clean-break principle

The courts prefer to make a lump sum payment to a spouse instead of ordering ongoing maintenance, thus ensuring that the parties are financially independent of each other. In such circumstances it is necessary for the spouse to receive sufficient payment to ensure that he/she will be able to survive in the years to come.

3. Ongoing maintenance

The court may make an order that one party is to pay maintenance to the other until the spouse in need dies or remarries.

HOW TO MAKE AND ENFORCE A MAINTENANCE CLAIM

How do you make a claim for maintenance?

You would approach your nearest magistrate's court and make an application against your spouse or the parent of a dependent child/children.

You would need to prove that the person against whom you are making the application is legally obliged to pay maintenance. This means that you would need to show that he/she is a parent of the dependent child/children or your spouse.

It is important to note that if the person who is being sued for maintenance does not appear in court on the date arranged, and the court is satisfied that he/she knew of the court date, the court would make an award of maintenance based on the evidence presented.

What do you do if maintenance is not paid in terms of an existing order?

If maintenance has not been paid within 10 days of the date on which it was due, you may approach the magistrate's court in your area and apply for:

- the authorisation of the issue of a warrant of execution to attach the defaulter's property to cover the outstanding amount plus interest and the cost of execution;
- an order for the attachment of emoluments (salary, wages, allowances, or any other form of remuneration); or
- an order for the attachment of any debt owing to the defaulter presently or in the future.

Any of these applications must be accompanied by:

- a copy of the maintenance or other order in question; and
- a statement under oath/affirmation stating the amount that the defaulter has failed to pay.

It is possible to recover arrear maintenance (maintenance that has not been paid over a period of time), plus interest, taking into account the ability of the defaulter to pay and the need of the person/s maintained.

Criminal offences attached to the failure to pay maintenance

The person who fails to pay maintenance is guilty of an offence and if convicted, may be liable to pay a fine or be imprisoned for a period not exceeding one year.

If the defaulter uses the defence that he/she is not able to pay maintenance in terms of an order, he/she would have to show that lack of funds was not due to his/her unwillingness to work or due to misconduct.

To resolve maintenance disputes

Mediation can assist couples to find solutions and settle financial disagreements.

Mediation is a co-operative problem-solving process which encourages couples to make decisions jointly regarding the division of their assets, the financial support of their children, and planned budgeting through communication and sharing of information.

CONTACT FAMILY LIFE CENTRE FOR MEDIATION

Please access our website on www.familylife.co.za for more information on **Family Life Centre** services and current events.

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