FAMILY LAW

Maintenance

Maintenance is an amount of money that a person has to pay towards another person based on a legal duty to support that person. A legal duty to support a person is based on the relationship between the persons, the need to be supported and the ability to support.

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For all your maintenance answers, simply follow our guide below:

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1. What is maintenance?

- Maintenance is an amount of money that a person has to pay towards another person based on a legal duty to support that person.
- A legal duty to support a person is based on the relationship between the persons, the need to be supported and the ability to support.
- For example, a father of a child has a legal duty to support his child, if the child needs to be supported and he is able to support the child.

2. Who is entitled to receive maintenance?

- All children are entitled to receive maintenance from their parents, irrespective of whether the child is born during a marriage or out of wedlock.
- Adopted children are entitled to receive maintenance from their adoptive parents, however, they are not allowed to receive maintenance from their biological parents.
- Parents are allowed to receive maintenance from their children if the parents have little or no income, and only if the children have the financial means to do so.
- Children may only receive maintenance from their grandparents if the children's parents are unable to support them and the grandparents are financially able to provide such support.
- Spouses are allowed to receive maintenance from each other during the marriage or after marriage in terms of a divorce order.

3. Where can an application for maintenance be made?

An application for maintenance can be made against a defendant (person who must pay maintenance) at any Maintenance Court ("court") in the district where the complainant (person who applies for maintenance) or the child, on whose behalf maintenance is claimed, resides or works.

4. Who can apply for maintenance on behalf of a child?

The parents, guardians and/or caregivers of a child can apply for maintenance on behalf of such a child.

5. What expenses can be claimed for in respect of a child?

- When considering the amount of maintenance to be claimed, the following should be taken into account:
    - expenses for food, clothing, accommodation, medical care and education; and
    - provision for electricity, water, linen, cutlery and the washing of clothes.
- The standard of living and financial means of the parents should also be considered when calculating the amount of maintenance.

6. What should a person take to court when applying for maintenance?

- Identity document of the complainant.

- Complainant’s contact details, such as telephone numbers and home and work addresses.
- If maintenance for a child is claimed, the birth certificate of that child.
- If maintenance for the spouse is claimed, the marriage certificate or divorce order where maintenance order was granted.
- A full list of expenses and any proof of same, such as receipts.
- The complainant’s payslip and proof of any other income.
- As much detail as possible regarding the defendant, such as telephone numbers, home and work addresses, list of known income and expenses, and so on.

7. What happens after the application has been made?

- The maintenance officer will inform the defendant of the application and will hold an informal enquiry with the complainant and defendant being present.
- The defendant must take any proof of his/her income and expenses (for example, bank statements, salary advice, receipts, and so on) to the informal enquiry.
- The purpose of the informal enquiry is to assist the complainant and the defendant in reaching a settlement.
- If a settlement is reached, an agreement will be entered into between the complainant and the defendant, which will be made an order of court.
- If a settlement cannot be reached, the maintenance officer will place the matter before court for a formal enquiry to be held.
- The court will consider the facts and evidence of the claim and decide whether maintenance should be payable and the amount of such maintenance. The court will then make an order reflecting its decision.
- The complainant and the defendant must both be present at the informal and formal enquiry, and will be allowed to have legal representation.
- If the defendant fails to appear at the formal enquiry in court, an order, which the court deems appropriate, may be given in his/her absence.
- It will not be necessary for the complainant and/or defendant to appear in court if they consent in writing to the maintenance order being granted.

8. How can a maintenance order be enforced?

- If the defendant fails to make a payment of maintenance in accordance with a maintenance order, the following remedies will be available to the complainant:
    - Warrant of execution – the attachment and selling of the defendant's property, such as his/her furniture, car and so on.
    - Emoluments attachment order – the attachment of the defendant's salary for payment of the monthly maintenance.
    - Attachment of debt – the attachment of money owed to the defendant by a third party, other than a salary, for example rent owed by a tenant of the defendant.
    - Criminal prosecution – the laying of a criminal complaint against a defendant based on the failure to comply with the maintenance order.

- When using one of the above remedies, the complainant must have a copy of the maintenance order available and proof of the defendant's failure to pay maintenance.
- If an order was granted for any of the above remedies, the details of the respondent must be given to any business who is involved in credit ratings (such as credit bureaus) or whose object it is to grant credit.

9. Until when must a child be maintained?

A parent's duty of support does not end when the child reaches a particular age, but when the child becomes self-supporting. A child will generally be considered to be self-supporting when s/he starts to work, but there are instances where continued support is necessary in accordance with the child's need for support. For example, if the child is mentally or physically challenged.

10. 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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