

DOMESTIC VIOLENCE ACT 116 OF 1998

1. In terms of the **Domestic Violence Act**, domestic relationship means a relationship between a Complainant and a Respondent in any of the following ways:
 - a) they are or were married to each other, including marriage according to any Law, Custom or Religion;
 - b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
 - c) they are the parents of a child or any person who have or had parental responsibility for that child (whether or not at the same time);
 - d) they are family members related by consanguinity, affinity or adoption;
 - e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration or;
 - f) they share or recently shared the same residence.

2. In terms of the Domestic Violence Act, **domestic violence means:**
 - a) physical abuse;
 - b) sexual abuse;
 - c) emotional, verbal and psychological abuse;
 - d) economic abuse;
 - e) intimidation;
 - f) harassment;
 - g) stalking;
 - h) damage to property;
 - i) entry into the Complainant's residence without consent, where the parties do not share the same residence or;

- j) any other controlling or abusive behaviour towards a Complainant or such conduct that harms, or may cause permanent harm to, the safety, health or well being of the Complainant.
3. In order to understand the various forms of domestic violence certain of these will now be discussed in a little more detail.
- 3.1 Economic abuse includes:
- a) the unreasonable deprivation of economical or financial resources which the Complainant is entitled to under law or which the Complainant requires out of necessity, including household necessities for the Complainant, and mortgage bond repayments or payment of rent in respect of the shared residence or;
 - b) the unreasonable disposal of household effects or other property in which the Complainant has an interest;
- 3.2 **Emergency monetary relief** means compensation for monetary losses suffered by Complainant at the time of the issue of a protection order as a result of domestic violence including:
- a) loss of earnings;
 - b) medical and dental expenses;
 - c) relocation and accommodation expenses or;
 - d) household necessities.
- 3.3 **Emotional, verbal and psychological abuse means** a pattern of degrading or humiliating conduct towards a Complainant including:
- a) repeated assaults, ridicule or name calling;
 - b) repeated threats to cause emotional pain, or;
 - c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the Complainant's privacy, liberty, integrity or security.
- 3.4 **Harassment means** engaging in a pattern of conduct that induces fear of harm to a Complainant including:

- a) repeatedly watching, or loitering outside of or near the building or place where the Complainant resides, works, carries on business, studies or happens to be;
- b) repeatedly making telephone calls or inducing another person to make telephone calls to the Complainant, whether or not conversation ensues;
- c) repeatedly sending or delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the Complainant;

3.5 **Intimidation means** uttering or conveying a threat, or causing a Complainant to receive a threat, which induces fear.

3.6 **Physical abuse means** any act or threatened act of physical violence towards a Complainant.

3.7 **Sexual abuse means** any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the Complainant.

3.8 **Stalking means** repeatedly following, pursuing or accosting the Complainant;

4. The terms of Section 3 of the aforementioned act a police officer **may without a warrant** arrest any Respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence against the Complainant.

5. Any Complainant may in the prescribed manner apply for a protection order and this order may be applied for outside ordinary court hours and on a day which is not an ordinary court day if a court is satisfied that the Complainant may suffer undue hardship if the application is not dealt with immediately.

6. Supporting affidavits of persons who have knowledge of the matter concerned may accompany the application. The Complainant may also be assisted in

completing the necessary application or may complete same himself or herself whereafter the application and affidavits must be lodged with the Clerk of the Court who shall submit the application and affidavits to the court.

7. Once submitted to the court the court will consider the application on the evidence contained in the affidavits however, may consider such additional evidence as it deems fit, including oral evidence or evidence by affidavit which shall form part of the record of the proceedings.
8. Should the court be satisfied that there is *prima facie* evidence that the Respondent is committing or has committed an act of domestic violence and the Complainant as a result of such domestic violence may suffer undue hardship, it may grant an interim protection order against the Respondent.
9. Should an interim order be granted it must then be served on the Respondent in the prescribed manner and will call upon the Respondent to show cause on the return date specified in the order why the protection order should not be issued and made final. A copy of the application and the record of any evidence noted must be served on the Respondent together with the interim protection order.
10. Should the court not issue an interim protection order the court must then direct the Clerk of the Court to cause certified copies of the application and any supporting affidavits to be served on the Respondent together with a prescribed notice calling on the Respondent to show cause on the return date specified in the notice or why a protection order should not be issued.
11. The return date may not be less that 10 (ten) day after service has been effected upon the Respondent provided that the return date may be anticipated by the Respondent upon not less than 24 (twenty four) hours written notice to the Complainant and the Court.
12. It is important to remember that an interim protection order shall have no force and effect until same has been served on the Respondent.

13. Once the interim protection order has been served and the court has received the return of service, the Clerk of the Court must serve a certified copy of the interim protection order as well as the original warrant of arrest on the Complainant.
14. Should the Respondent not appear on the return date and should the court be satisfied that there has been proper service and that the application contains *prima facie* evidence that the Respondent has committed or is committing an act of domestic violence the court must issue a protection order in the prescribed form.
15. Should the Respondent appear on the return date in order to oppose the issuing of a protection order the Court must proceed to hear the matter and consider the evidence previously received as well as any further affidavits or oral evidence as it may direct, which shall form part of the record of the proceedings. After hearing the evidence the court must issue a protection order in the prescribed form if it finds on a balance of probability that the Respondent has committed or is committing an act of domestic violence.
16. Upon the issuing of a protection order the Clerk of the Court must cause the original of such order to be served on the Respondent and a certified copy of such order as well as the original warrant of arrest to be served on the Complainant. The Clerk of the Court must then forward certified copies of any protection order as well as the warrant of arrest to a Police Station of the Complainant's choice. The protection order will remain in force until it is set aside and the execution of such order shall not be automatically suspended upon the noting of an appeal.
17. In order to understand protection orders it is vitally important that you are aware of what the court's **powers** are in respect of granting protection orders.
 - 17.1 Firstly the court may **prohibit** the Respondent from:
 - a) committing any act of domestic violence;
 - b) enlisting the help of another person to commit any such act;

- c) entering a residence shared by the Complainant and the Respondent, provided that the court may impose this provision only if it appears to be in the best interests of the Complainant;
- d) entering a specified part of a shared residence;
- e) entering the Complainant's residence;
- f) entering the Complainant's place of employment;
- g) preventing the Complainant who ordinarily lives or lives in a shared residence as contemplated in paragraph c from entering or remaining in the shared residence or a specified part of the shared residence;
- h) committing any other act as specified in the protection order.

17.2 The court may also **impose additional conditions** which it deems necessary to protect and provide for the safety, health or well being of the Complainant including:

- a) an order that any arm or dangerous weapon in the possession or under the control of the Respondent is to be seized;
- b) that a peace officer is to accompany the Complainant to a specified place to assist with arrangements regarding the collection of personal property.

17.3 The court may further impose an order on the Respondent that certain **rent and or mortgage payments be made** by the Respondent. This order will be made once the court has considered the financial needs and resources of the Complainant as well as the Respondent.

17.4 The court may order that the Respondent **pay emergency monetary relief**, once again, taking into account the financial needs and resources of the Complainant and the Respondent.

17.5 The **physical address** of the Respondent is to be **omitted** from the protection order unless the nature of the terms of the order necessitates the inclusion of such address.

- 17.6 The court may also order that the **Complainant's physical address** is **not disclosed** in any manner, which may endanger the safety, health or well being of the Complainant.
- 17.7 Should the court be satisfied that it is in the best interests of any child it may refuse the Respondent contact with such child or order contact with such child on such conditions as it may consider appropriate.
- 17.8 The court may not refuse to issue the protection order or impose any condition merely on the grounds that other legal remedies are available to the Complainant.
18. Whenever the court authorizes a warrant of arrest such warrant will be suspended subject to compliance with any prohibition, condition, obligation or order imposed by the said court.
19. The said warrant will remain in force unless the protection order is set aside or it is cancelled or executed. Should the warrant of arrest be executed and should the Complainant require a second warrant of arrest then, an affidavit should be filed in the prescribed form requesting another warrant for his or her protection.
20. The Complainant may hand the warrant of arrest together with the affidavit stating that the Respondent has contravened any prohibition, condition, obligation or order containing the protection order to any member of the South African Police Service. If it thereafter appears to the member that there are reasonable grounds to suspect that the Complainant may suffer imminent harm as a result of the alleged breach of the protection order, the member must forthwith arrest the Respondent for allegedly committing the offence referred to.
21. Should the Police Officer concerned be of the opinion that there are insufficient grounds for arresting the Respondent then the officer must warn the Respondent to appear before court on a charge of committing the offence referred to in the order. The Police Officer will normally explain to the Complainant that he or she is entitled to simultaneously lay a criminal charge against the Respondent.

22. Firearms and dangerous weapons unfortunately play a part in a number of matters involving domestic violence and thus needs a bit more attention. The court must order a member of the South African Police Services to seize any arm or dangerous weapon in the possession or control of the Respondent if the court is satisfied on the evidence placed before it that the Respondent has threatened or expressed the intention to kill or injure himself or herself or any person in a domestic relationship whether or not by means of such arm or dangerous weapon. The court may further order such seizure if evidence placed before it shows that possession of such arm or dangerous weapon is not in the best interests of the Respondent or any other person in a domestic relationship as a result of the Respondent's state of mind or mental condition, inclination to violence, or use of or dependence on intoxicating liquor or drugs.

23. The Complainant or Respondent may upon written notice to the other party and the court apply for the variation or setting aside of the protection order. Should the court be satisfied that good cause has been shown for such variation or setting aside it may issue an order to this effect. Such an order will not however be granted to the Complainant unless the court is satisfied that the application is made freely and voluntarily.