

1. MAINTENANCE IN TERMS OF THE MAINTENANCE ACT 99 OF 1998

- 1.1 Maintenance complaints are usually in respect of:
 - i) –existing maintenance orders where a variation of same is requested (e.g. an order in terms of a divorce order);
 - ii) –first applications for maintenance where there is no previous existing maintenance order;
 - iii) –an application for the reduction of an existing maintenance order.
- 1.2 The complaint is lodged by the completion of the appropriate forms. A copy of same is annexed as per “A”.
- 1.3 The complaint is then lodged at the Maintenance Office and the Maintenance Officer will investigate same.
- 1.4 At the local magistrate`s court there are Maintenance Officers that will assist in the completion of the form. Should an attorney represent you then they will assist with this exercise.
- 1.5 The application will be served on the defendant and this will require his/her presence at court where the Maintenance Officer will begin their investigations.
- 1.6 At this enquiry the parties will be required to produce proof of their income and expenditure and the Maintenance Officer will question them so as to investigate thoroughly.
- 1.7 If represented by an attorney, the respective legal representatives will assist the party concerned.
- 1.8 It may happen that at this preliminary investigation and negotiation the parties settle and reach agreement on an appropriate maintenance order. The parties will then complete the appropriate consent and will appear before the Presiding Officer so as to make the consent or agreement an order of court.
- 1.9 Should there be no agreement the parties will then postpone the matter before the Presiding Officer to a trial date where oral evidence will be heard. This postponement will also be attended by the legal representatives should there be any.
- 1.10 At the hearing the Maintenance Officer will be present to ensure that the best interests of all the parties, especially the minor children, are given priority.
- 1.11 The court will take a number of factors into account before making a decision. The following are two of the more prominent:
 - 1.11.1 -whether there is a need for maintenance;
 - 1.11.2 -whether the defendant can afford to pay the maintenance requested or the increase requested.

- 1.12 When considering these and other factors the Presiding Officer will examine the evidence of the parties in respect of their income and expenses. It is vitally important to ensure that when bringing or opposing such applications you have a comprehensive list of income and expenditure supported by the necessary vouchers and receipts.
- 1.13 The same criteria will be needed when deciding whether or not there is a need for the increase or decrease.
- 1.14 It often happens that either of the parties may at the time of the application be residing with a new partner. It must be remembered that there is no duty on such a partner to maintain the children however there is a duty on them to contribute to the common home. This means that their contribution to the common home will be taken into account when considering the income and expenses of the party concerned.
- 1.15 Maintenance does not cease when the minor child reaches the age of 18. The duty to support continues to exist until the child is self-supporting.
- 1.16 Biological grandparents can also be held accountable to maintain their grandchildren. So if the parent is not in a position to assist then the grandparents may be approached and their means examined so as to establish whether or not they can contribute towards the maintenance of the child or children.
- 1.17 Maintenance orders will also be made in default and this will occur where one of the parties does not appear at the maintenance hearing. The presiding officer may then grant an order by default.
- 1.18 Maintenance orders may be enforced by way of execution against property, the attachment of Emoluments and by the attachment of any debt.
- 1.19 Should the party fail to pay maintenance then the aggrieved spouse or party may then approach the Maintenance Officer yet again. They will then complete the necessary form in respect of the arrear maintenance. A copy of same as per annexure "C". The guilty party will then be called to the criminal court so as to answer to a criminal charge for failing to pay maintenance.
- 1.20 It is important to remember that at these criminal proceedings the parties may not, as complainant, be represented by an attorney and are assisted by the state attorney or prosecutor. The defendant however will be forwarded the opportunity to employ a legal representative in order to defend his or her case.