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“Everyone has to pay their child support, and no matter if you're a Hollywood actor or anyone else, it's always a little bit more than you want to pay.”

- Ethan Hawke

Maintenance



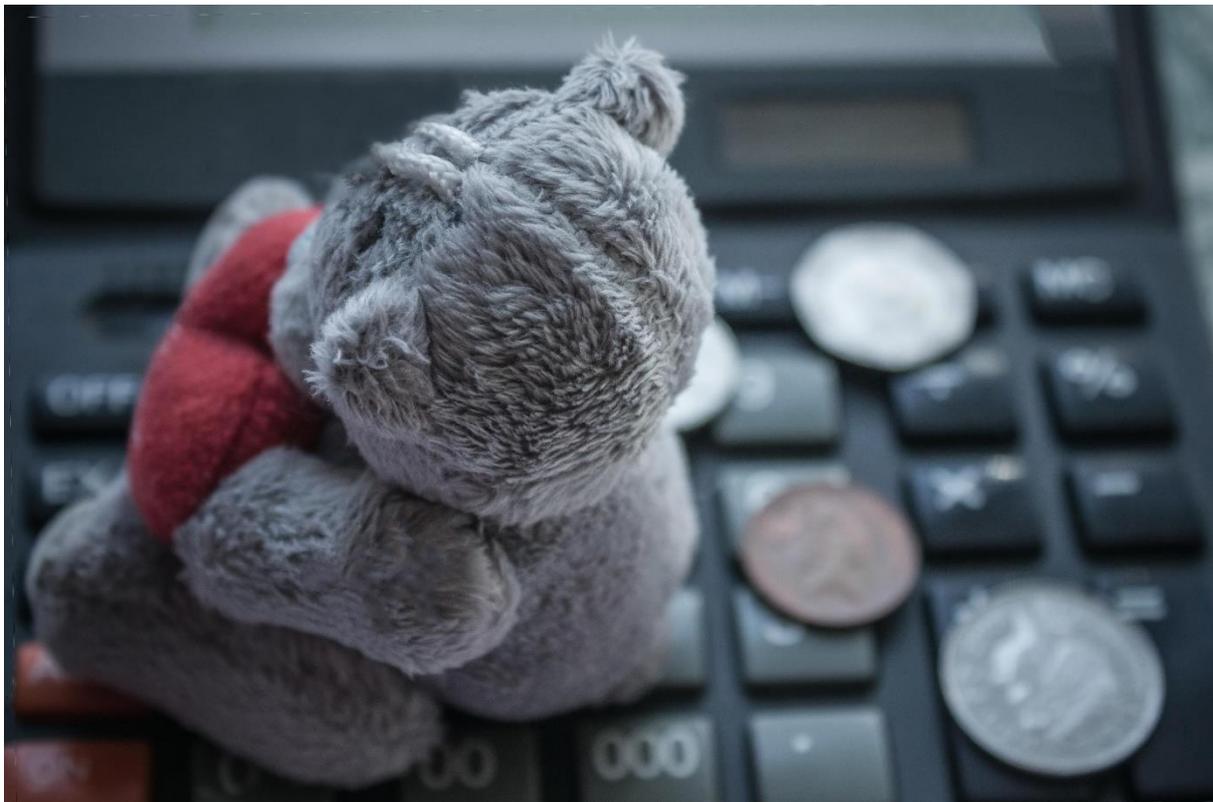
Maintenance in South Africa

Maintenance has been in the headlines many times over the years, yet many people feel that the changes made to the Maintenance Act have not helped them to get the financial support that they feel is necessary to maintain their children.

On the other hand, many Parents feel that their Ex's are trying to 'bleed them dry' and that the money that they pay does not get used for their children, but rather to maintain a certain lifestyle for the Ex.

The State has implemented various ways to combat the epidemic of non-payment. However, it is always important to ensure legal process will follow.

There is a reciprocal duty between Parent and Child, between Spouses and sometimes a maintenance duty between ex-Spouses after divorce. This duty may exist after death – support out of deceased estates.



The Maintenance Act No. 99 Of 1998 Was Created To Deal With Maintenance Matters. This Act's Preamble Is a Summary of What the State is Trying to Achieve

“WHEREAS the Constitution of the Republic of South Africa, 1996, as the supreme law of the Republic, was adopted so as to establish a society based on democratic values, social and economic justice, equality and fundamental human rights and to improve the quality of life of all citizens and to free the potential of all persons by every means possible, including, amongst others, by the establishment of a fair and equitable maintenance system;

AND WHEREAS the Republic of South Africa is committed to give high priority to the rights of children, to their survival and to their protection and development as evidenced by its signing of the World Declaration on the Survival, Protection and Development of Children, agreed to at New York on 30 September 1990, and its accession on 16 June 1995 to the Convention on the Rights of the Child, signed at New York on 20 November 1989;

AND WHEREAS Article 27 of the said Convention specifically requires States Parties to recognise the right of every child to a standard of living which is adequate for the child’s physical, mental, spiritual, moral and social development and to take all appropriate measures in order to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child;

AND WHEREAS the recovery of maintenance in South Africa possibly falls short of the Republic’s international obligations in terms of the said Convention”.

AND WHEREAS the South African Law Commission is investigating, in addition to the recovery of maintenance for children, the reform of the entire South African maintenance system;

AND WHEREAS it is considered necessary that, pending the implementation of the said Law Commission’s recommendations, certain amendments be effected in the interim to the existing laws relating to maintenance and that, as a first step in the reform of the entire South African maintenance system, certain of those laws be restated with a view to emphasising the importance of a sensitive and fair approach to the determination and recovery of maintenance;

Maintenance – What is Maintenance?

Maintenance is the obligation to provide for another person, for example a minor, with housing, food, clothing, education and medical care, or with the means that are necessary for providing the person with these essentials. This legal duty to maintain is called ‘the duty to maintain’ or ‘the duty to support’.



Who must pay Maintenance?

The duty to maintain is based on blood relationship, adoption, or the fact that the Parties are married to each other.

- A child must be supported or maintained by his or her parents, whether married, living together, separated or divorced, including parents who have adopted the child; and/or
- The child's grandparents, whether or not the child's parents were married to each other. However, this varies from one case to another.

The duty to support a family member is not limited to supporting a child. Any family member, irrespective of their age, can ask any family member to support or maintain them, provided that the following two conditions are met:

- The family member who claims support is unable to maintain themselves.
- The family member from whom maintenance is claimed is able to afford the maintenance that is claimed.

The main requirement of the means test is that the person who is liable to pay maintenance must have means and the maintenance claimed must be reasonable.

Section 6 Enquiry:

Whenever a Complaint to the effect-

- that any person legally liable to maintain any other person fails to maintain the latter person;
- that good cause exists for the substitution or discharge of a maintenance order; or
- that good cause exists for the substitution or discharge of a verbal or written agreement in respect of maintenance obligations in which respect there is no existing maintenance order,
- has been made and is lodged with a maintenance officer in the prescribed manner, the maintenance officer shall investigate that complaint.

After investigating the complaint, the Maintenance Officer may institute an enquiry in the Maintenance Court within the area of jurisdiction in which the person to be maintained, or the person in whose care the person to be maintained is, resides, carries on business or is employed with a view to enquiring into the provision of maintenance for the person so to be maintained.

In practice, Section 6 investigations will be informal and the Maintenance Officer will try and settle the matter. If the parties cannot settle the matter, then the matter will be referred to a Section 10 enquiry by the Maintenance Court.

Section 10 Enquiry by Maintenance Court.

This enquiry takes place before a Magistrate in a Maintenance Court.

The Maintenance Court holding an enquiry may at any time during the enquiry cause any person to be subpoenaed as a witness or examine any person who is present at the enquiry, although he or she was not subpoenaed as a witness, and may recall and re-examine any person already examined.

The Maintenance Court shall administer an oath to, or accept an affirmation from, any witness appearing before the Maintenance Court and record the evidence of that witness.

Any Party to proceedings under this Act shall have the right to be represented by a legal representative.

No person whose presence is not necessary shall be present at the enquiry, except with the permission of the Maintenance Court.

A Maintenance Court will conclude maintenance enquiries as speedily as possible and shall ensure that postponements are limited in number and in duration.

A Maintenance Court may, where a Maintenance Order has not been made and a postponement of the enquiry is necessary and if the Court is satisfied that—

- there are sufficient grounds prior to such postponement indicating that one of the Parties is legally liable to maintain a person or persons; and
- undue hardship may be suffered by the person or persons to be maintained as a result of the postponement,

may make an interim Maintenance Order.

What Can Be Claimed For?

The level at which maintenance is provided is usually determined by the standard of living of the parents and their standing in the community.

When child maintenance is calculated the Courts will determine the reasonable needs of the child on a monthly basis and the Courts consider the circumstances at that prevail at that time.

Factors to be considered is a wide concept and includes things such as food, housing, clothing, medical care and education.

Enforcement of Maintenance or Other Orders

Whenever any person against whom any Maintenance Order has been made has failed to make any particular payment in accordance with that Maintenance Order; or against whom any order for the payment of a specified sum of money has been made has failed to make such a payment, such Order shall be enforceable in respect of any amount which that person has so failed to pay, together with any interest thereon—

- by execution against property;
- by the attachment of emoluments; or
- by the attachment of any debt.

Criminal Offences Relating to Maintenance Orders

Any person who fails to make any particular payment in accordance with a maintenance order shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years or to such imprisonment without the option of a fine.



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