

# A guide on how to apply for a protection order in terms of the domestic violence act



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## Purpose of this manual

The purpose of this guide is to explain the process of applying for protection order in terms of the Domestic Violence Act 116 of 1998.

Please note: This guidebook does not offer legal advice and therefore cannot replace consultation with legal service providers should this become necessary.

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## What is a protection order?



Recognising that domestic violence is a social evil, government has put in place legislation which allows survivors of abuse to seek protection orders against domestic violence and harassment.



A protection order is a court order, generally granted by a Magistrate's Court prohibiting the respondent from engaging in or attempting to engage in any type of violence or harassment against the complainant.



A protection order can be obtained to protect a person against domestic violence by their domestic partner, but it can also be obtained to protect a person from any form of violence or harassment from any person who is deemed to have a close relationship to the perpetrator.



A court will issue a protection order if the respondent's behaviour is unreasonable or if there is a risk that the complainant may be harmed or subject to abuse of any kind in the future.

## How to read legislation



Each law in South Africa must be consistent with the South African Constitution. Any law that is inconsistent with the Constitution, is invalid.



Law is generally governed by legislation that is put in place by Parliament.



Legislation must be read together with its relevant Regulation, in order to understand how an individual can give effect to the rights set out in the legislation.



Each piece of legislation starts with a preamble. The preamble sets out the purpose of the legislation and its intended impact on society.



Section 1 of each piece of legislation contains the definition section. The definition section defines key terms and/or phrases contained in the relevant Act. This is an important section, as the definitions will guide how and when the piece of legislation is used.

## Domestic violence act

The purpose of this act is to provide a victim with protection against domestic abuse or violence, thus allowing victims to apply for a Protection Order from the Magistrate's court against the person committing the abuse.

If the affected person seeks a Protection Order under the Domestic Violence Act, there must have been a domestic relationship between them and the accused.

According to the Act, a domestic relationship exists if the affected person and the accused:

-  Are or were married to each other in terms of any law, custom or religion.
-  Are of the same or opposite sex, live or have lived together in a marriage or single relationship.
-  Are the parents of a child or are persons who have or had parental responsibility for that child.
-  Are family members related by blood relation, affinity or adoption.
-  Are or were engaged, dating or in a customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration.
-  Are in a close relationship and share or recently shared the same residence.

## Important Definitions



Any person older than 18 years who, in relation to a child, person with a disability or an older person, takes responsibility for meeting the daily needs of such person.



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A relationship between the complainant and any other person, with regard to the following criteria:

- The degree of trust between the persons;
- The level of each person's dependence on, and commitment to, the other person;
- Length of the relationship;
- Frequency of contact between the persons; or
- Degree of intimacy between the persons.



Any person who is not in a domestic relationship with the complainant, who conspired with, was procured by or used by the respondent to commit an act of domestic violence against the complainant and who:

- Committed or allegedly committed an act of domestic violence or
- Aided or allegedly aided the respondent in the commission of an act of domestic violence.



## Forms of abuse according to the domestic violence act

### Domestic violence includes:

#### Physical abuse

- Physical violence or threats of physical violence towards a complainant.
- Depriving the complainant of their liberty.
- Slapping, punching, kicking, throttling and biting.
- Assault with objects, guns, knives, or any other dangerous weapon
- Administering (or attempting to administer) drugs and/or substances that affect the complainant's judgement or is harmful to their health or wellbeing, without the complainant's consent.
- Threatening to withhold the provision of medication.
- Restraining or threatening to restrain someone.

#### Sexual abuse

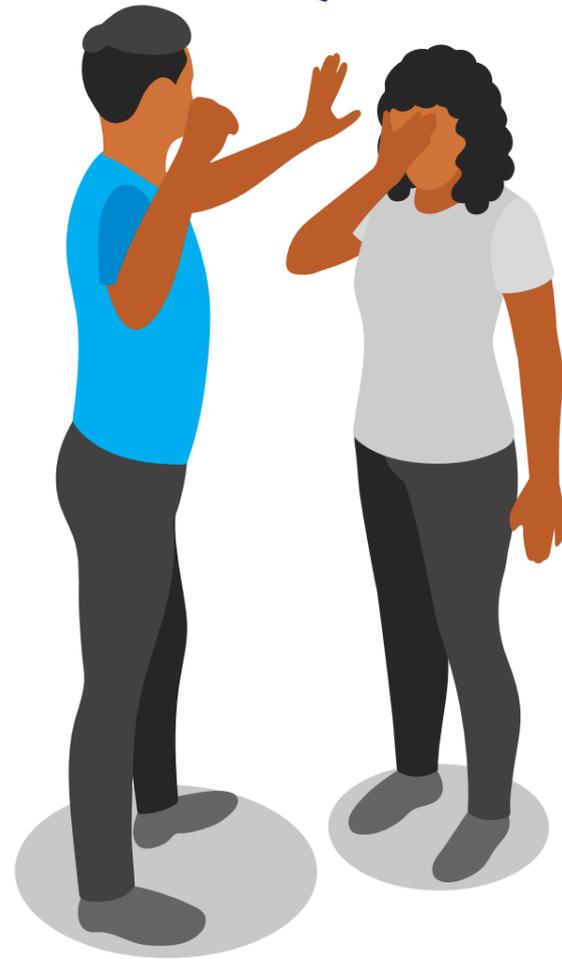
- Rape, attempted rape and indecent assault.
- Ongoing verbal abuse with sexual slurs.
- Any behaviour that humiliates, degrades or otherwise violates the sexual integrity of the complainant, irrespective of whether or not such conduct constitutes a sexual offence.

#### Emotional, verbal and/or psychological abuse

- Constant insults, ridicule or name calling.
- Repeated threats of violence or death to cause emotional pain.
- Wilfully damaging or destroying property in someone else's domain.
- Harming or threatening to harm a pet or an animal which will affect someone's wellbeing.
- Telling others or threatening to tell others about someone's private information without their consent.
- Threatening someone with the death or injury of another person or damage to another's property.
- Threats of suicide or self-harm.
- Constantly being obsessively possessive or jealous in a way that seriously invasion of someone's privacy, liberty, integrity or security.

#### Economic abuse

- Selling of shared property such as livestock or matrimonial house without consent.
- Accessing a joint bank account for personal use without consent.
- Unreasonably not providing financial resources, which they need or require by law such as education expenses, household necessities, etc.
- Unreasonably getting rid of household property that someone has an interest in without their permission.
- Using someone's financial resources without their permission or
- Convincing or persuading an unwilling person to:
  - Give up control over assets or income; or
  - Sign a legal document allowing that someone's finances be managed by another person.



## Forms of abuse according to the domestic violence act ...continued



### Intimidation

- Threats of physical violence, or damage to property belonging to someone even through electronic means.
- Written or verbal death threats.
- Threats of taking away a person's freedom in order to force them to do or not to do something.
- Sexual intimidation is when a threat is made that a sexual offence will be committed against them or a related person.



### Harassment

- Repeatedly unreasonable watching the complainant or a related person outside or near their house, workplace, school or business premises or any place where s/he happens to be.
- Constantly phoning the person or causing another person to phone the complainant (whether or not the caller speaks to the complainant).
- Monitoring someone's movements without their consent.
- Entering someone's home without their permission.
- Unreasonably interfering with someone's property.
- Sending electronic communications to a person which:
  - Are abusive, degrading, offensive or humiliating.

- Violates or offends their sexual integrity or dignity.
- Threatens to harm someone, a related person or their property (or inspires the belief that they will cause harm).
- Contains information of a private nature.
- Disclosing electronic communication to another person, which:
  - Contains private information.
  - Violates or offends the sexual integrity and dignity of the complainant.
  - Is abusive, degrading, offensive or humiliating.
  - Makes the complainant believe that they or a related person may be harmed or their property damaged.



### Sexual harassment

- Unwanted sexual attention from a perpetrator who knows or ought to reasonably know that such attention is unwelcome.
- Unwelcome explicit or implicit behaviour, suggestions, messages or remarks to the complainant of a sexual nature or regarding the complainant's or related person's sexual orientation, gender or gender expression, that offends, intimidates or humiliates the complainant.
- Promise of reward for a sexual request.
- Threat of punishment or punishment for not agreeing to a sexual request.



### Related person abuse

- Threaten the complainant with acts of physical violence or damage to property of a related person.
- Threats to a related person that the respondent will cause physical violence toward them or damage their property.
- Threatening related person with causing physical violence to or damaging the property of the complainant.
- Committing an act of physical violence against or cause damage to property of a related person which harms someone.



### Spiritual abuse

- Promoting hatred against someone which brings about harm to them because of their religious or spiritual beliefs.
- Stopping a person from freely practicing their religion.
- Preventing them from developing their consciences and beliefs and/or thinking and forming opinions freely.
- Manipulating religious or spiritual beliefs as a reason for abuse.

## Forms of abuse according to the domestic violence act ...continued



### Damage to property

- Breaking the window or door to enter property.
- Cutting, breaking or damaging in any other manner, shared furniture or clothes.
- Wilful damage or destruction of property or threats to damage or destroy property, that belong to or which is in the possession or under the control of the complainant, or in which the complainant has a vested interest.

### Elder abuse

- Abusing an older person (a male who is 65 years old and above or a female who is 60 years and above) with whom a domestic relationship is shared. This can be any behaviour or lack of appropriate action which harms or distresses the older person.

### Coercive behaviour

- To compel or force a complainant to abstain from doing anything that they have a lawful right to do, or to do anything that they have a lawful right to abstain from doing.

### Controlling behaviour

- Causing someone to become dependent on the respondent and includes:
  - Cutting them off from other support.
  - Using the complainant's resources for themselves.
  - Not allowing them to have the things they need to be independent, resist or escape.
  - Managing their everyday behaviour.

### Exposing a child to domestic violence

- Cause a child to see or hear domestic violence; or experience the effects of domestic violence.

### Entry into someone's:

- Home, workplace or place of study without their consent even though these spaces are not share.
- Using a duplicate key to gain access to someone's property.
- Climbing the wall to gain access to someone's property.
- Any other controlling or abusive behaviour that intimidates, threatens, abuses, degrades, offends or humiliates another and harms their safety, health or wellbeing.



## Duty to assist and inform complainant of rights

**At the scene of an incident of domestic violence or when the incident of domestic violence is reported – a member of the South African Police Service (SAPS) must:**



Assist the complainant, including assisting with getting medical treatment and finding a shelter;



If possible, hand a notice to the complainant in which their rights are contained – Form 1;



If possible, explain to the complainant, or to the person acting on behalf of the complainant:

- That a member of SAPS will render assistance as the circumstances may require;
- Their right to apply for a protection order to prevent the respondent from committing further acts, even where no criminal complaint has been lodged, and the right to simultaneously apply for a domestic violence safety monitoring notice to ensure the complainants safety, health and wellbeing;
- Their right to lodge a criminal complaint; and
- The purpose of the notice.



If the complainant is unable read the notice themselves, a member of SAPS must:

- Read the notice to the complainant;
- Direct the complainant to a website where the notice is contained;
- Inquire whether the complainant understands and requires further information regarding the remedies;
- Inform the complainant that further information may be obtained from the clerk of the court;
- Inform the complainant of the option of applying for a protection order and for a domestic violence safety monitoring notice online, and how the online portal may be accessed.

## Obligations of functionaries

- A functionary, who in the course of their performance of their duties, have a belief or suspicion on reasonable grounds, that a child, a person with a disability or an older person may be a victim of domestic violence:
  - Must without delay:
  - Complete a report on Form 2, which sets out the reasons for such belief or suspicion; and
  - Submit the report to a social worker or a member of SAPS.
- Must conduct a risk assessment.
- May after the risk assessment, provide or refer the complainant for further services.

### Who is a functionary?

Medical practitioners, social workers, officials employed at public health establishments, health care personnel, educators or caregivers.

## Obligation to report domestic violence

An adult person who knows, believes or suspects on reasonable grounds, that an act of domestic violence has been committed against a child, a person with a disability or an older person, must report this on Form 3, to a social worker or a member of SAPS.



## Arrest by a peace officer

A peace officer who is at a scene of an incident of domestic violence, may without a warrant, arrest any respondent, where there is a reasonable suspicion that an act of domestic violence has been committed.



### A peace officer who is not a member of SAPS must:

-  Make arrangements for the complainant to obtain medical attention;
-  Where a protection order has not been issued against the respondent, the peace officer must provide the complainant with a list:
  - That resembles Form 4.
  - That is available on the websites of the Department of Justice and Constitutional Development,
  - Electronically or by hand.
  - That is available in the official language of the complainant.
-  Where possible, hand the complainant a notice that resembles Form 5.

## Entering a private residence

If a member of SAPS receives a report that an offence containing an element of physical violence has allegedly been committed during an incident of domestic violence and reasonably suspects that a person who may furnish information regarding the offence is in a private residence – that member may, without a warrant, enter the residence.

## Where to apply for a protection order

You can apply for a protection order at your nearest Magistrate's Court, generally in the Family Court section.

## How to apply for a protection order

- A complainant may, on an *ex parte* basis, apply to the court for a protection order using Form 6.
- The completed form can be submitted:
  - Electronically, by submitting the application to an electronic address of the court having jurisdiction;
  - In person, with the clerk of the court; or
  - Through an online portal.
- The application must be made by way of an affidavit in which the following must be stated:
  - The facts of the case;
  - The nature of the order being applied for;
  - The name of the police station where the complainant is likely to report a breach of the protection order; and
  - The court having jurisdiction at which the complainant will be able to or prefers to attend the hearing of the matter.

## How to apply for a protection order ...continued



### Note



An application for a protection order can be brought by a functionary or another person who has a material interest in the wellbeing of the complainant.

If the application is brought on behalf of the complainant, the application must be brought with the written consent of the complainant, except where the complainant is a child or a person who, in the opinion of the court, is unable to provide the required consent.

Further, a child or any person on behalf of a child, may apply for a protection order without the consent or assistance of a parent, guardian or any other person.

If the application is brought on behalf of a complainant, the affidavit must contain:

- The grounds on which such person has a material interest in the wellbeing of the complainant;
- The occupation of such person and capacity in which such person brings the application; and
- If required, proof of written consent of the complainant on Form 7.
- Where it is possible and available, supporting affidavits may be submitted with the application.
- Where an application is made on an urgent basis, outside the ordinary hours or on a day which is not an ordinary court day, the application may be submitted

directly to the court, or as directed by the court. Urgency will only be granted if the court is satisfied, from the information provided in the application, that a reasonable belief exists, that the complainant is suffering or may suffer harm, if the application is not heard immediately.



- The clerk of the court must capture all applications and any supporting affidavit in the integrated electronic repository and immediately submit the application to the court.
- Documents to be included in the integrated electronic repository:
  - Application and supporting affidavits
  - Application for safety monitoring notice
  - Safety monitoring notice
  - Return of services
  - All notices
  - Interim protection order
  - Final protection order
  - Warrants of arrest

## Duty of the clerk where a complainant is not represented by a legal practitioner

The clerk of the court must, before the complainant applies for a protection order:

Hand the complainant a notice, Form 8, which must be in one of the official languages of the complainant;

Read the notice, or ensure the notice is read to the complainant;

Inquire whether the complainant understands the notice and requires more information regarding the relief available to the complainant and advise of the right to lodge a criminal complaint;

If the complainant does not understand any part of the notice, explain the part of the notice the complainant does not understand;

Inform the complainant that they are required to confirm, in writing, that the clerk has followed the correct process – this confirmation must also be captured by the clerk and filed in the court file.

The information in Form 8, must be available on the online portal in all official languages and the complainant must confirm on the online portal that the notice was read and understood, if they made use of the portal.

## Writing an affidavit

**When reporting a matter to SAPS, one will be asked to complete an affidavit.**

**The following steps should be followed:**

I, (name) \_\_\_\_\_, ID number \_\_\_\_\_, declare that the following:

This is where you discuss what has happened; location, date and time of the incident and include any other information which you may deem relevant – be as detailed as possible.

You are allowed to ask a SAPS officer to complete the affidavit on your behalf.

You will then need to sign the affidavit with your full name and surname.

The SAPS officer will commission the affidavit.

## Domestic violence safety monitoring notice

- A complainant, who shares a residence with the respondent, may simultaneously, with the application for a protection order or where an interim or final protection order is in force, apply for the issuing of a domestic violence safety monitoring notice, on Form 9.
- The application must be lodged with the clerk of the court, or electronically by submitting the application to an electronic address of the court that has jurisdiction.
- Supporting affidavits by persons who have knowledge of the matter may accompany the application.
- The court must as soon as is reasonable consider the application and may also consider additional evidence, such as oral evidence or evidence by affidavit, which must form part of the record of proceedings.
- If the court is satisfied that there are reasonable grounds for believing the complainant, where a joint residence is shared with the respondent and there are reasonable grounds to suspect that the respondent poses a threat to the complainant's safety, the court may issue a domestic violence safety monitoring notice on Form 10. The court may, order the station commander of a police station servicing the area where the complainant resides to direct

a member of SAPS, for the period specified in the notice, to do any of the following:



Contact the complainant at regular intervals electronically to enquire about the complainant's well-being;



To visit the joint residence at regular intervals and to see and communicate in private with the complainant; and



## Domestic violence safety monitoring notice

...continued



Where a member is prevented from seeing the complainant, to:

- Enter the joint residence to see and to communicate in private with the complainant; and
- Overcome resistance against such entry by using as much force as is reasonably required.
- The clerk of the court must immediately, but no later than two hours after the application was dealt with, notify the complainant in person, telephonically or electronically of the outcome of the application. And thereafter, forward a certified copy of the notice to the complainant.
- The clerk of the court must serve the notice immediately upon the station commander, by hand or electronically.
- The station commander must immediately assign a member of SAPS to serve the notice on the respondent.

The member who is assigned must:



Within 24 hours of being assigned, serve the respondent with a copy of the notice by hand or electronically;



Contact the complainant immediately after service on the respondent;



If the application or notice could not be served, contact the complainant in person or telephonically for assistance on the whereabouts of the respondent;



As soon as is reasonably possible, but no later than 12 hours after service on the respondent, submit a return of service on Form 40, to the clerk of the court by hand or electronically; and



If notwithstanding the assistance by the complainant, the respondent could still not be served, the member must within 12 hours of the inability to serve, file a return of non-service which must state the reason for non-service.



The clerk of the court must after receiving the receipt of service or non-service, notify the complainant telephonically or electronically.



When the notice has expired, a report must be filed with the clerk of the court by the station commander or their delegate, on Form 11.



The report must:

- Provide when and how the member contacted the complainant upon receipt of notice;
- Provide when the member communicated with the complainant, if:
  - The complainant or related person was hurt or threatened with harm;
  - There was change damage or threat of damage to property; or
  - Any pet was harmed or threatened.
- If the complainant appeared to be hurt or threatened, advise what information was provided to the complainant, i.e.:
  - Referral for medical assistance;
  - Referral to shelter; or
  - Lodging a criminal complaint
- Be filed with the clerk of the court by hand or electronically within 48 hours after the notice expiring.

## Interim protection order

- The court must as is reasonably possible, consider an application for a protection order and may consider additional evidence, including oral evidence or evidence by affidavit.
- In certain circumstances, a court can call for investigations to be carried out:
  - By a family advocate – regarding the welfare of any child affected by the proceedings; or
  - By a social worker – if it appears to the court that a child involved in or affected by the proceedings is in need of care and protection.
- If the court is satisfied that:
  - There is *prima facie* evidence that the:
  - The respondent is committing or has committed an act of domestic violence;
  - The complainant is suffering or may suffer harm as a result of domestic violence; and
  - The issuing of a protection order is immediately necessary, the court must issue an interim protection order on Form 12.
- If the court issues an interim protection order, the clerk of the court must immediately notify the complainant telephonically, in writing, by hand or electronically.
- After issuing the interim protection order, the court must direct that certified copies of the application and supporting affidavits, the record of any evidence noted and the original interim protection order, is served on the respondent. Service must take place no later than 24 hours, if served in person, on the respondent.
- The interim protection order must call on the respondent to show cause on the return date, why the interim protection order should not be made final.
- The interim protection order is of force and effect from the time it has been served on the respondent. It remains in force until it is set aside by a competent court.



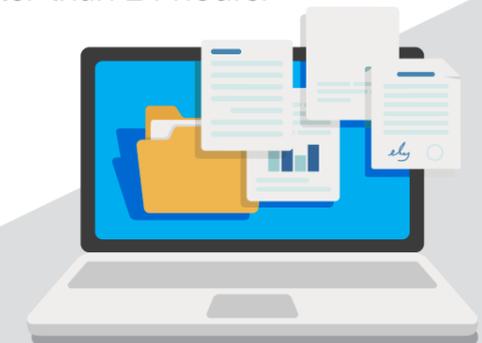
## Notice to show cause

**If the court does not issue an interim protection order, the court must direct the clerk of the court to ensure that certified copies of the application and any supporting affidavits are served on the respondent, together with a notice calling on the respondent to show cause on the return date why the protection order should not be issued, on Form 13.**

**The clerk of the court must notify the complainant telephonically, in writing, by hand or electronically that the court has not issued an interim protection order, that the court has issued a notice to show cause and the date of the hearing.**

## Service and filing of documents

- Whenever service by hand is required, the interim order, the notice to show cause, and the final protection order must be served by the clerk of the court, the sheriff or a peace officer.
- The clerk of the court must serve any document by handing a certified copy of the document to the person on who the document is being served or serve the document electronically.
- A person who has been authorised to serve a document, and who is not a member of SAPS, may request the assistance of the SAPS to enable the person to serve the document.
- The complainant or respondent who requires the document to be served, is responsible for the costs of such service.
- Any document required or directed to be served or executed upon, may be transmitted by fax or electronically.
- The return of service must be filed by hand or electronically with the clerk of the court and contain the date and time of service, the electronic mail address, physical address or social media information to which service was effected and if served by hand, the full names and age of the person who was served.
- A return of non-service must state the reason for non-service and attempts made to serve.
- The return of service or non-service must be filed with the clerk of the court as soon as possible, but not later than 24 hours.



## Service and filing of documents...continued

- Filing any document with the clerk of the court, may be done by:



Hand delivery;



Email or fax; or



Uploading the document to the online portal.



Where a document has been served or filed electronically, proof of filing by way of delivery report, screenshot, fax transmission report and the return of service must be kept as proof of service, filing or submission. A return of service is to be completed on Form 40.



If a document is required to be served by hand, and the respondent cannot be located, the clerk of the court must contact the complainant or relevant person to obtain new details in order to effect service. Upon receiving the new details, the clerk of the court must:

- Amend the address or details;
- Sign next to the amendments effected; and
- Send the document to the relevant police station or sheriff serving in the area where the respondent resides, studies, carries on business or is employed.



If the respondent still cannot be served, the clerk of the court must notify the complainant thereof and advise them of their option to apply for substituted service. Here, the complainant may request the court, on Form 41, to authorise an alternative manner of service and must provide the court with reasons as to why the alternative manner of service will result in the successful service of the document.



If substituted service is granted, the court must issue an order on Form 42.



Any document served electronically is regarded as an original and does not need to be certified.

## Existing and reciprocal orders on applications

**Before the court can issue any order, the court must establish whether there is any other order against the complainant or respondent, which was previously issued by a court. Where the court establishes that there is another application pending between the same parties, the court must:**



Order that both applications be dealt with together;



Adjourn the matter for a hearing; and



Give direction regarding the notification of parties and service of documents.



## Final protection order



- If the respondent does not appear on the return date and proper service was effected and the application contains *prima facie* evidence that the respondent has committed or is committing an act of domestic violence, the court must issue a final protection order.
  - If an interim order was issued, the final order must be made on Form 29. If it was not issued, the final order must be made on Form 30.
- Or, if the respondent does not appear on a return date and if proper service was effected – the court must proceed to hear the matter and consider any further evidence before it. If the court finds that on a balance of probabilities that the respondent committed or is committing an act of domestic violence, the court must issue a final protection order.
- If the respondent appears on the return date to oppose the protection order, the court must proceed to hear the matter and:
  - Consider any evidence;
  - Consider further evidence or oral evidence;
  - If there is a dispute of fact, the court:
    - May postpone the matter for further evidence to be led; and
    - Must extend the interim order.
- Interim order issued: If the respondent appears but the complainant does not, or where both parties do not appear, the court must extend the interim protection order or where both parties did not appear, extend the date on Form 31.
- If the complainant does not appear on the extended date, the court may discharge the interim order.
- The clerk of the court must notify the parties of the extended date on Form 32.
- No interim order issued: if the respondent appears but the complainant does not, or where both parties do not appear, the court may set a new return date for hearing of oral evidence or discharge the matter.
- The court must after a hearing issue a final protection order if it finds on a balance of probabilities that the respondent has committed or is committing an act of domestic violence.
- When the final protection order is issued, the court must direct that the original must be served on the respondent within 48 hours or as soon as is reasonably possible and a certified copy and the original warrant of arrest must be served on the complainant.
- The clerk of the court must immediately forward certified copies of any protection order to the police station of the complainant's choice.
- A final protection order is of force and effect from the time it is served on the respondent and remains in force until it is set aside. The execution of such order is not automatically suspended upon the noting of an appeal.

## Courts powers in issuing a protection order

- The court may prohibit the person from:
  - Committing or attempting to commit any act of domestic violence;
  - Enlisting the help of another person to commit an act of domestic violence;
  - Entering a shared residence;
  - Entering a specified part of a shared residence;
  - Entering the complainant's workplace or place of studies;
  - Preventing the complainant who lives or lived in a shared residence from entering or remaining in the shared residence or a specified part of the shared residence;
  - Disclosing any electronic communication or making available any communication as may be specified in the protection order; or
  - Committing any other act.
- The court may impose additional conditions which it may deem necessary, including:
  - An order seizing weapons in possession or under the control of the respondent and that a peace officer must accompany the complainant to a place where their personal belongings must be collected.
- Recommending that the complainant approach a police station to investigate the matter with the view of instituting criminal prosecution.
- The court may impose on the respondent obligations as to the discharge of rent or mortgage payments depending on the financial needs of the complainant.
- The court may order the respondent to pay emergency monetary relief having regard to the financial needs of the complainant.
- The physical, home, study and work address and contact details of the complainant or related person must be omitted from the protection order, unless circumstances necessitate the inclusion of these details.
- The court may issue any direction to ensure the complainant or related persons physical, home, study and work address and contact details are not disclosed.
- Where the complainant or related person is a child, the details shall not be disclosed.
- If the court believes it is in the best interests of the child, it may refuse the respondent contact with the child or order contact with the child subject to conditions.
- If there are other legal remedies available, the court may refuse to issue a protection order, or impose any condition or make an order which it is competent to impose.



## Warrant of arrest

Whenever a court issues an interim protection order or a final protection order, the court must make an order:



Authorising the issue of a warrant of arrest on Form 33; and



Suspending the execution of such warrant.



The warrant of arrest remains in force until the protection order is set aside or cancelled after its execution.



The clerk of the court must issue the complainant with a second or further warrant, if the complainant files an affidavit on Form 34, in which it is stated that a further warrant is required for their protection and that the existing warrant has been executed or cancelled or lost or destroyed. The affidavit must be submitted to the clerk of the court by hand or electronically.



Where a respondent has contravened the protection order, the complainant must submit an affidavit, on Form 35, to any member of SAPS. The complaint must

hand the affidavit, together with a certified copy of the protection order and the original warrant of arrest to the police. The affidavit must state:

- The respondent has contravened a prohibition, condition, obligation or order;
- The specific prohibition, condition, obligation, or order contravened; and
- The manner in which or the extent to which the respondent contravened the protection order.



If it appears to the member that the respondent has breached the protection order and that said breach is causing the complainant to suffer harm, the member must immediately arrest the respondent.



If the member is of the opinion that there are insufficient grounds for an arrest, the member must immediately hand a written notice, on Form 36, to the respondent which:

- Specifies the name, residential and work address and the occupation status of the respondent;
- Calls upon the respondent to appear before a court, on the date and time specified, on the charge of committing an offence; and
- Contains a certificate signed by the member confirming the member handed the original notice to the respondent and that the member explained the import thereof.

## Variation or setting aside protection order

- A complainant or respondent may by way of Form 38, apply for the variation or setting aside of a protection order. The application must be submitted to the clerk of the court.
- The other party, if they oppose the application, must within 10 days of being served, give written notice which sets out the grounds and facts on which the application is opposed.
- If the court is satisfied that circumstances have changed materially, good cause has been shown and proper service has been effected on the respondent, it may issue an order to this effect on Form 39.
- The clerk of the court must then forward the notice to the complainant and the respondent.



## Attendance of proceedings

No person may be present during proceedings, except:

- Officers of the court;
- The parties to the proceedings;
- Person bringing the application on behalf of the complainant;
- Any legal representative representing any party;
- Witnesses;
- Not more than three persons for the purpose of providing support to the complainant or respondent; and
- Any other person whom the court permits to be present.



## Resources

### Helplines

**Gender-Based Violence Command Centre Emergency Line**

0800 428 428 | "please call me" \*120\*7867#

**SMS for persons with disabilities**

SMS 'help' to 21531

**SAPS Emergency Services**

0860 10111/10111

**Crime Stop tip-off Line**

08600 10111

**Child Line South Africa**

0800 055 555

**Child Welfare**

0861 424 453

**Child Emergency line**

0800 123321

**Depression and Anxiety Helpline**

0800 708 090

**Department of Social Development**

0800 121 314 | SMS 32312

**Gay-Lesbian Support**

0860 333 331 | SMS 079 891 3036

**Gender-based Violence Command Centre**

0800 428 428

please call \*120\*7867# | SMS 'help' to 31531

**Human Trafficking Hotline**

0800 222 777

**Lifeline SA**

0861 322 322

**Sonke Gender Justice for counselling and support**

Cape Town: 021 423 7088;

Johannesburg: 011 339 3589

**Stop Gender Violence Helpline**

0800 150 150

**Suicide Crisis line (SADAG)**

0800 567 567 | TEARS 010 590 5920

Dial \*120\* 7355#

**Thuthuzela Care Centre**

0800 0428428

Please call me \*120\*7867

**Independent Police Investigative Directorate**

012 399 0000

**Rape Crisis**

021 447 9762

### Organisations

**Family and Marriage Association of South Africa (FAMSA)**

011 975 7106/7

**People Opposed to Women Abuse (POWA)**

076 694 5911 | 011 642 4345

**Agisanang Domestic Abuse Prevention and Training (Adapt)**

011 786 660

**Women's Legal Centre**

021 424 5660

**National Shelter Movement of South Africa**

0800 001 005

**Masimanyane Women's Rights International**

043 743 9169

**TEARS Foundation**

010 590 5920

**Saartjie Baartman Centre for Women and Children (SBCWC)**

021 633 5287

**The Frida Hartley Shelter**

011 648 6005

**Nisaa Institute for Women's Development**

011 854 5804/5

**Shukumisa**

021 447 1467

## Magistrates courts in gauteng



### Johannesburg

225 Albertina Sisulu Street, Jeppe  
New Doornfontein, 2198  
011 618 4516

### Brixton

High Street,  
Brixton Mayfair West, 2092  
011 839 2768

### Senwabarwana

Main Rd  
Next to Bochum Plaza Bochum

### Newlands

186 Main Road,  
Newlands Newlands, 2092  
011 477 7252

### Hillbrow

32 Sam Hancock Str,  
Hillbrow, Johannesburg, 2038  
011 642 4441

### Randburg

18 Shepherd Ave  
Randburg, 2125  
011 998 5300

### Alexandra

223 2nd Street, Wynberg  
Alexandra, 2090  
011 786 5181

### Germiston

2 Hardach St,  
North Germiston  
011 873 0500

### Soweto

Heckroodt Circle, Zone 2,  
Meadowlands, Soweto 1851  
011 536 0555

### Soshanguve

Commissioner Street,  
Soshanguve, Block F  
Soshanguve, 0164  
012 730 1000

### Daveyton

Mockey Street  
Daveyton, 1520  
011 424 1199

### Tembisa

232 Andrew Mapheto Dr  
Johannesburg, 1632  
011 281 0300

### Mamelodi

868 Shabangu Ave,  
Naledi, Pretoria  
012 805 4001

### Khayelitsha

Steve Bikho Street, Khayelitsha,  
Pretoria Central  
021 360 1400

### Sebokeng

18 Moshoeshoe Street,  
Iskor North Sebokeng  
016 988 1320



This guide was prepared and written by **Elgene Roos**

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### **BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

### **PLEASE NOTE**

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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