

HOW TO GET A PROTECTION ORDER

IN TERMS OF THE DOMESTIC VIOLENCE ACT, 1998 (ACT NO. 116 OF 1998)



1. Who can apply for a protection order?
The complainant

2. Who is a complainant in terms of the Domestic Violence Act (DVA)?
Any person who has been in a domestic relationship with the respondent.

3. When is there a domestic relationship between the complainant and the respondent?
1. Where they are or were **married** to one another;
2. Where they **live or lived together in a relationship** in the nature of a marriage, though they are not;
3. Share **parental responsibility** over a child;
4. Engaged, dating or customary **relationship**;
5. Blood **relatives** or related by affinity or adoption;
6. Share or recently shared **same residence**.

4. What is an act of domestic violence?
1. Physical abuse;
2. Sexual abuse;
3. Emotional, verbal and psychological abuse;
4. Economic abuse;
5. Intimidation;
6. Harassment;
7. Stalking;
8. Damage to property;
9. Entry into the complainant's residence without consent, where the parties do not share the same residence; or
10. Any other **controlling or abusive** behaviour towards a complainant, where such conduct causes harm to the safety, health or wellbeing of the complainant. (Section 1)

5. What is economic abuse?
1. Unreasonable deprivation of economic resources to which the complainant is legally entitled or which the complainant requires out of necessity;
2. Unreasonable disposal of household effects or other property in which the complainant has an interest. (Section 1)

6. What is emotional, verbal or psychological abuse?
1. It is a **pattern of degrading or humiliating** conduct, including:
2. Repeated **insults, ridicule or name calling**;
3. Repeated threats to cause **emotional pain**;
4. Repeated exhibition of **obsessive possessiveness or jealousy** which constitutes a serious invasion of **privacy, liberty, integrity or security**. (Section 1)

7. What is harassment?
A pattern of conduct that induces fear of harm including:
1. **Repeated watching or loitering** outside or near the building where the complainant resides, works, carries on business, studies or happens to be;
2. **Repeated telephone calls** or inducing another to make telephone calls whether conversation ensues or not;
3. **Repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, mails or other objects** to the complainant.

8. What is intimidation?
It is uttering or conveying a threat or causing a complainant to receive a threat, which induces fear. (Section 1)

9. Against whom can a protection order be obtained?
Any person who is or has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against the complainant.
→ See item 3

10. Who has the duty to inform the complainant of their rights in terms of the DVA?
A member of the South African Police Service. (Section 2) Form 1 Regulation 2; Notice to complainant in a case of domestic violence.

11. When does the duty to inform arise?
1. At the scene of the incident of domestic violence;
2. As soon thereafter as is reasonably possible; or
3. When the incident of domestic violence is reported.
4. Section 2

12. What assistance or information must the police give at incident of domestic violence
Render such assistance as may be required, including:
1. Making arrangements for complainant to find suitable shelter and obtain medical treatment;
2. Hand **prescribed notice** to complainant in their official language of choice. Regulation 2 of the DVA regulations;
3. Explain the content of the notice;
4. Explain the remedies available to complainant in terms of the Act. (Section 2(a)-(c))

13. Where can a complainant apply for a protection order?
1. At any Magistrates Court or Family Court established in terms of an Act of Parliament. (Section 4(1) read with section 1
2. (Section 12) **Any court** within the area where the complainant permanently resides, carries on business or is employed. Where the respondent resides, carries on business or is employed or any court where the action arose.

14. Can a complainant be represented by a lawyer when applying for a protection order?
1. Yes
2. Section 14

15. With whom must the application for a protection order be lodged at the Magistrates court?
1. The Clerk of the court.
2. Section 4(7)

16. What must the Clerk of the court do if the complainant is unrepresented?
He/she must inform the complainant of:
1. The relief available in terms of the DVA;
2. Their right to lodge a criminal case. Section 4(2)
3. Form 3 Regulation 5; Information notice to complainant

17. Can another person apply for a protection order on behalf of the complainant?
1. Yes
2. Section 4(3)

18. What is required of a person bringing an application on behalf of the complainant?
1. That they must have a material interest in the wellbeing of the complainant; or
2. Section 4(3)

19. Is it necessary to have the written consent of the complainant when bringing an application for a protection order on their behalf?
1. Yes
2. Section 4(3)

20. What are the circumstances in which such consent will not be necessary?
Where the complainant is:
1. A minor;
2. Mentally retarded;
3. Unconscious;
4. A person whom the court is satisfied is unable to provide the required consent.
5. Section 4(3)(a)-(d)

21. Can a minor apply for a protection order without the assistance of a guardian?
1. Yes.
2. Section 4(4)

22. Can one bring an application for a protection order outside ordinary court hours or on a day that is not an ordinary court day?
1. Yes
2. Section 4(5)

23. When is it allowed for an application for a protection order to be brought outside ordinary court hours or a day not an ordinary court day?
If the court is satisfied that the complainant will suffer **undue hardship** if the application is not dealt with immediately. Section 4(5)

24. What documents must be submitted by the complainant when applying for a protection order?
1. An **application** substantially corresponding to **Form 2 of Regulation 4** of the DVA regulations ; application for protection order
2. Supporting affidavits by persons who have knowledge of the matter.
3. Sections 4(6) and (7).

25. What happens after the clerk of the court has submitted the application and any supporting affidavits in terms of S 4 (6) and (7) of the DVA?
1. Section 5(1) The court must as soon as is reasonably possible consider the application
2. Section 5(2) The court must issue an Interim protection order in accordance with **Form 4 Regulation 6** if the court is satisfied that there is prima facie evidence that the respondent is:
a. Committing or has committed an act of domestic violence
b. Undue hardship may be suffered by the complainant if the protection order is not issued immediately.

26. What happens if an interim protection order is granted?
1. **Form 4 Interim Protection Order Regulation 6**.
2. Section 5(3) The interim protection order must be served on the respondent in the prescribed manner which calls on the respondent to show cause on the specified return date as set out in the interim order why a protection order should not be issued.

27. What happens if the court does not issue the interim protection order?
Section 5(4) The court must direct the clerk of the court to cause certified copies of the application and any supporting affidavits to be served on the respondent in the prescribed manner together with the prescribed notice [**Form 5 Regulation 7**]; calling on the respondent to show cause why a protection order should not be issued.

28. Issuing of final protection order
Section 6(1) A final protection order will be issued if the respondent does not appear on the return date as set out in the interim protection order or if the respondent does not appear on the return date as set out in the notice when an interim protection order was not granted.
Section 6(2) If the respondent appears on the return date as set out in the interim protection order or notice and opposes the issuing of a protection order the court will then proceed to hear the matter
A protection order issued by the court must be in the prescribed form either in accordance with **Form 6 Regulation 8**; or **Form 7 Regulation 8**.

29. What happens after a protection order is issued?
Section 6(6) The clerk of the court must forward certified copies of the protection order and warrant of arrest to the police station of the complainant's choice.

30. Issuing of the warrant of arrest
1. Section 8(1)(a) The warrant of arrest must be authorised and issued in accordance with **Form 8 Regulation 9**.
2. Whenever a court issues a protection order the court must make an order authorising the issue of a warrant of arrest.
3. The execution of the warrant of arrest is suspended subject to compliance with any prohibition, condition, obligation or order imposed by the court.

YOU HAVE A RIGHT TO STOP DOMESTIC VIOLENCE.