



The duty of family members to maintain their relatives

Blood relatives have a responsibility for each other. The legal duty of support is strongest for family members who are closely related. The law says that grandparents should care for their grandchildren if they have become orphans. Aunts and uncles can be asked to provide support for children if the parents and grandparents are unable to do so.



The duty of husband and wife to maintain each other

A husband and wife have a legal duty to maintain each other. A husband or a wife can claim maintenance while they are living together if the household expenses are not being fairly shared.

If a married couple separates or divorces, the person who has less money and property can claim maintenance. But maintenance cannot be claimed after a divorce is finalised if the divorce order did not include it.

Maintenance of people with disabilities

If a child is disabled and is unable to support him- or herself, a parent might have to pay maintenance for the entire life of the child.

Criminal Behaviour

- It is a crime to lie to the Magistrate or Maintenance Officer.
- It is a crime to delay the process.
- It is a crime to try to stop a person from making an application for maintenance with threats or intimidation.
- It is a crime to ignore a maintenance order.
- It is a crime for the complainant to misuse maintenance money.
- It is a crime for the Magistrate or Maintenance Officer to tell anyone about the details of the case.



For more information see the Legal Assistance Centre's *Guide to the Maintenance Act 9 of 2003*.

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Pocket **THE MAINTENANCE** GUIDE **ACT 9 OF 2003**



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What is maintenance?

Maintenance is money or goods that a person has a legal duty to provide for the basic living expenses of his or her dependants. Living expenses include rent, water, electricity, food, clothes, transport, medical expenses and school fees.

Who can claim maintenance?

A parent, the person who looks after the child (such as the grandmother) or any other person who is worried about the child – such as a relative, social worker, doctor, nurse, teacher, traditional leader or religious leader. A child can also claim maintenance from a parent.

Glossary

Complainant – The person who applies for maintenance.

Defendant – The person who is asked to pay maintenance.

Dependant – A person who depends upon the support of another to live. Children are dependent on their parents and some other blood relatives; elderly parents are sometimes dependent on their children; and husbands and wives may be dependent on each other.

Both parents are responsible for their children

- If one parent is not helping to support their children, the court can order this parent to contribute.
- Although both parents are responsible for their children, this does not mean they have to pay the same amount of money.
- The amount of money they must pay will depend on how much money and property they each have, and how much money they each earn.
- The payment of maintenance must come before anything else except for payments parents make to support themselves.

All children have a right to maintenance

- It does not matter if the child is born inside or outside of marriage.
- It does not matter if the child is the first or last born.
- It does not matter whether the child is born from a first or second marriage.



Pregnancy

Both parents also have a responsibility to pay for the costs of pregnancy and giving birth. For example, a pregnant woman needs fresh fruit and vegetables and should see a doctor or nurse regularly.

You can ask for a maintenance order when you are pregnant. You can also ask the father to help pay for these costs after the child is born if you apply before the child's first birthday. You can apply later if you have a special reason why you could not claim before – for example, if the father could not be found during the first year.

How to claim maintenance

Go to the Magistrate's Court

- The Clerk of the Court will help you to fill in the forms. You do not need an appointment.
- You should take information about yourself, your child, how much you earn and how much it costs to care for your child.
- The entire process should be private and you do not need a lawyer.
- The Maintenance Officer has a duty to investigate your claim.



Meeting with the Maintenance Officer

Both parents will be asked to attend an informal meeting.

Most cases are settled at this meeting. If the parents cannot reach an agreement, a Magistrate will have to decide the case.

Enquiry by the Magistrate

- If the Magistrate has to decide the case, both parents will have to come back on another day.
- If the defendant does not come to court when he or she is supposed to, the Magistrate can issue a maintenance order anyway. The defendant can complain about the order later, but he or she must start paying maintenance right away.



How long must a parent pay maintenance for a child?

A maintenance order generally ends when a child is able to look after him- or herself by paying for food, housing, etc. This is usually when the child reaches 18. However, this time may vary if:

- a child leaves school before age 18 and gets a job.
- a child is disabled or for some other reason cannot earn enough money to pay for basic needs.
- a child goes to university, in which case maintenance payments will continue until the child is 21.

Claiming maintenance from someone in another country

You can still claim maintenance if the defendant is living in South Africa. The Namibian and South African courts will work together on the case. Maintenance can sometimes be claimed from people living in other countries as well.



What if the maintenance is not paid?

If you do not receive a maintenance payment 10 days after it should have been paid, you should contact the Clerk of the Court. The court can take the money directly from the defendant's wages, or sell some of his or her property to get the money that is owed.

The duty of children to maintain their parents

Children have a duty to maintain their parents in some cases. This is usually when the children have become adults and the parents are elderly and cannot look after themselves.