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Domestic Violence

ABC GUIDE TO OBTAIN A PROTECTION ORDER

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The Steps to be followed to obtain a Protection Order in domestic violence situations are regulated by the Domestic Violence Act 116 of 1998 (hereafter referred to as "the Act"). I strongly suggest that you consult an attorney, advocate or family lawyer should your matter be complicated.

Below is a simple A B C guide outlining a few simple steps that a complainant (the person affected by domestic violence) has to follow in order to obtain an interdict (Protection Order) against a person. However before these steps may be laid down, it's important to know whether you should approach the Domestic Violence Court or the South African Police Services for a Peace Order: Speak to them about it.

Q: What is a Protection Order?

A: In simple terms, a protection order is an order granted by the Domestic Violence Court which prohibits the person whom the order was made against to commit any acts of domestic violence against you. Furthermore, a Court might grant you an interim Protection Order with basically the same effect as a Protection Order which will be finalised later.

Q: Who may approach the Domestic Violence Court?

A: In order to approach the Domestic Violence Court you have to be a "complainant" as described by the Act. According to the Act, such a person is someone who is or has been in a domestic relationship with a respondent (the person committing the domestic violence) and who is or has been subjected or allegedly subjected to an act of domestic violence, including any child in the care of the complainant. So therefore the next question is what is a domestic relationship?

Q: What is a "domestic relationship"?

A: According to the Act, a "domestic relationship" means a relationship between a complainant and a respondent in any of the following ways:

(a) they are or were married to each other, including marriage according to any law, custom or religion;

(b) they live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;

(c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);

(d) they are family members related by consanguinity, affinity or adoption;

(e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or

(f) they share or recently shared the same residence. Now the last question is, what is domestic violence?

Q: What is a domestic violence?

A: According to the Act, domestic violence" means-

(a) physical abuse;

(b) sexual abuse;

(c) emotional, verbal and psychological abuse;

(d) economic abuse;

(e) intimidation;

(f) harassment;

(g) stalking;

(h) damage to property;

(i) entry into the complainant's residence without consent, where the parties do not share the same residence; or

(j) any other controlling or abusive behaviour towards a

complainant.

Therefore, if you are experiencing domestic violence, the following simple steps have to be followed in getting you started...

Step 1 ...

Write on a page all the incidents of domestic violence done to you or to your children on paper. Be very clear with names of people, dates and times. Take your time as this information you shall have to fill onto a form at Court which is dealt with in step 2 below.

Tip: If you fill in the form at Court without first making a draft to work from at your convenience, you might be so nervous at Court and leave out valuable information.

Find out all the details of the person whom you want to be protected against from domestic violence, e.g. his/her home and work address and identity number etc.

Step 2 ...

Go to the Domestic Violence Court closest to your area and the Clerk of the Court will give you a form to fill in. The form is referred to as an "Application for Protection Order" form. Use the information you have gathered in Step 1 and fill in the form. The form is in the form of an affidavit and you therefore have to swear to the correctness of the information under oath and sign. Therefore do not hide any information from the Court or exaggerate.

Caution: If your information is not 100 % correct, you may be cross-examined on such correctness in Court and if it is found that you were not totally honest, this would not be in your favour.

· If you require any assistance in filling in the form, the Clerks of the Court would be happy to assist you.

· Once you have filled in the Application for Protection Order form, return it to the Clerk who will have it commissioned.

· The Clerk of the Court would then take the completed documents to a Magistrate who would read through it and might want to speak to you as well. The Court will then do one of 3 things:

(a) Dismiss your application if there is no evidence that domestic violence is taking place.

(b) Grant you an Interim Protection Order which will be finalised on a date provided by the Court where the Respondent will have a chance to give his / her side of the story; or

(c) Postpone the matter without granting an Interim Protection Order and provide a date where the Respondent will get a chance to give his / her side of the story.

PLEASE NOTE: An Interim Protection Order has no force and effect until it has been served on the Respondent as in step 3 below. So do not waste time in getting it served.

Step 3...

· Now the Respondent has to be informed about the application to Court and the date which both of you have to be back at Court. Depending on the Court, the Clerk of the Court might give you the necessary documents to drop at the Police Station or Sheriff's Office operating where the Respondent lives or works in order to have it served on the Respondent. Make sure that you receive proof from the officer serving the documents on the Respondent that he has done so.

Hint: The South African Police Services does not charge to serve these documents but the Sheriff does.

· If the Respondent commits any acts of domestic violence towards you, report the matter immediately to the Police and if there is no Interim Protection in place, go immediately back to the Domestic Violence Court and state your case in order to get one.

· Go back to Court on the date provided and state your case. If there are grounds, the Court shall grant you a Protection Order.

If you have a Protection Order against you, it is possible to have it varied or set aside. Consult the Court, your Attorney, Advocate or Family Lawyer in this regard.

Kind regards,

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