

YOUR MAINTENANCE QUESTIONS ANSWERED

What is mediation?

Mediation is a voluntary process of structured negotiation that can help two parties in conflict to resolve their differences. Mediation is not a form of counseling. It opens up discussion and helps you work through the different legal issues that need to be settled.

A skilled mediator assists families to work out creative arrangements for themselves and their children. The settlement agreement is then made an order of court. The agreement could include maintenance, the medical and educational expenses, contact and care arrangements and any other arrangements that are in the best interests of your minor children. Parents should carefully consider the views of the child when negotiating contact and care arrangements.

Mediation is cost effective, less stressful than traditional litigation and saves time.



**“Every courtroom
needs a case but
not every case
needs a
courtroom.”**

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What is maintenance?

This is an amount that someone who has a legal duty to support another person must pay to that person monthly. For example, both parents have a legal duty to support their children according to their own financial position and the specific reasonable needs of the child.

Both parents are proportionately liable for the maintenance of their children according to their means.

Who is entitled to maintenance?

- All children, even those who are over the age of majority, are entitled to receive maintenance from their parents, whether or not the parents are/ were married, until the child becomes self-supporting.
- Children can claim maintenance from their deceased parent's estate.
- Parents and grandparents can also claim maintenance for their bare necessities from their children and grandchildren if they have no or little income and the child or grandchild is in a position to help.
- Spouses have a duty to support each other and can claim maintenance from each other.
- Adopted children are entitled to maintenance from their adoptive parents and not their natural parents.

Can partners claim maintenance from each other?

Partners in customary, civil and religious marriage have a duty to support each other. Partners in a lifelong heterosexual or same-sex relationship may claim maintenance from each other.

Who can lodge a claim for maintenance on behalf of a child?

A parent, guardian or curator can claim maintenance on behalf of minor children.

What is included in a claim for maintenance?

- You can include food, toiletries, clothing, accommodation (including electricity, water and other household necessities), recreation, medical care and education (which may include tertiary education).
- The amount of maintenance payable is affected by the standard of living of the parents and their standing in the community.

How do I enforce a maintenance order?

Lawson Legal can help you by mediating all maintenance related disputes. If the person obliged to pay maintenance fails to make any payment for a period of 10 days, you may apply for:

- **A warrant of attachment against a debt**
In the case of the defaulter having an amount available in a bank account, a pension fund or any other form of debt owed to him, by attaching that account.
- **A warrant of execution**
Attaching and selling the defaulter's property, such as furniture, a car or a house.
- **Attachment of emoluments**
Attaching the defaulter's salary for payment of an amount every month until the arrears are settled. To apply, complete a FORM J306 E, which is available from the maintenance court. You must attach a copy of the maintenance order and a statement of payments and non-payments, indicating the amount of arrears. The clerk of the court can issue a notice to be served on the defaulter's employer instructing them to make payments

at certain times and in a certain way.

Should the three civil procedures above be ineffective, you may approach the maintenance officer to lay a criminal charge against the defaulter.

How long should I maintain my child?

A parent's duty to support a child ends when the child becomes self-supporting, not when the child reaches a particular age. The duty of support changes when the child reaches the age of majority (18) and it is then confined to the child's necessities.

Can I claim maintenance before a child is born?

'Lying-in' expenses are the mother and child's expenses immediately before, during and immediately after the child's birth and include hospital, medical and reasonable related costs. Both parents are proportionately liable for these costs in accordance with their means.

Can I claim for an increase in the amount of maintenance?

Yes. At Lawson Legal we help parties negotiate maintenance increases. Maintenance orders should be reviewed annually to keep up with changing circumstances and the rate of inflation.

MEDIATION IS RIGHT FOR YOU IF:

1. Children are involved and you need to act swiftly in the best interests of the children
2. You wish to save money
3. You are not prepared to go through a long and costly court process

Mediation is not the only alternative to a formal court experience, but it is one to consider seriously.

General Disclaimer: The information in this document is for general information purposes only and does not constitute legal advice. Each person's situation is different and you should get specific advice for particular needs.



It is advisable to include an annual escalation clause into a maintenance order to avoid applying for an increase every year.

Can I apply for a reduction in maintenance?

Yes. We can assist you to settle this out of court. If mediation is successful, the agreement is made an order of the court. You can apply for a reduction in maintenance in the following circumstances:

- your personal circumstances change substantially, such as losing your job or being in a serious road accident that affects your ability to earn an income:
- you lose your job;
- your child takes on part-time work;
- the other parent's salary increases substantially.

Must I still pay maintenance if the other parent remarries, is involved in another relationship or does not let me see the children?

Yes. Your children's right to receive maintenance (and your obligation to pay it) continues even if:



- your ex does not allow you contact with them;
- you or your ex remarry or are involved in a new relationship.

If your ex does not allow you contact with your children in terms of the divorce order, you must use the correct channels to resolve this dispute.

What is a fair amount of maintenance?

- One approach is to base the maintenance on how much is actually spent on the child per month (even if this is not enough to meet all the child's needs because the parent is struggling financially).
- The other approach reflects how much it would cost per month to provide for the child in a way that meets his needs in a reasonable way.

The amount of maintenance payable is calculated by first determining the actual costs of raising a child.

These expenses include rental, food, toiletries, medical, education, clothes, electricity, transport and other expenses. The total cost of raising each child is then shared by both parents in proportion to their respective incomes.

For example:

Cost of raising child: R2 000 per month

Mother's income: R9 800 per month

Father's income: R16 000 per month

The mother is obliged to contribute 38% (her income divided by the total income) and the father's contribution would be 62% (his income divided by the total income).

Therefore, the mother pays R760 per month and the father pays R1 240 per month towards the cost of raising the child in this scenario.

Parents should agree on the total of the reasonable living expenses of the child. If they disagree, mediation should be the next step.

For more information, please contact us on 061 672 3670 or email us at advjadelawson@outlook.com

Alternatively, please visit our website on www.lawsonlegal.co.za

