



From Conflict to Cooperation: A Handbook for Resolving Family Law Disputes and Ensuring Financial Support

About This Booklet

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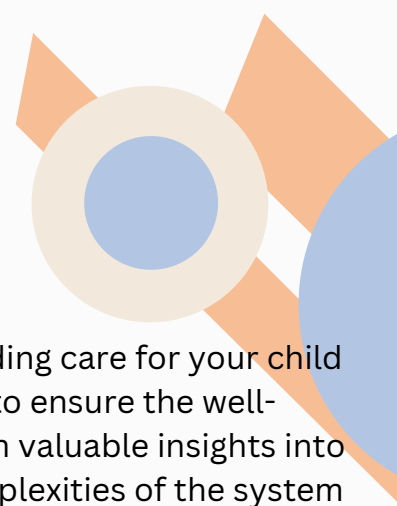
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CHAPTER 1: UNDERSTANDING YOUR RIGHTS AS A SINGLE PARENT



Establishing Your Legal Rights

As a single parent, you face unique challenges and responsibilities in providing care for your child on your own. It is crucial to have a clear understanding of your legal rights to ensure the well-being of both yourself and your child. This chapter aims to provide you with valuable insights into the legal aspects of single parenting and empower you to navigate the complexities of the system with confidence.

Importance of Understanding Your Rights

Knowledge is power, and when it comes to legal matters, being well-informed is essential. Understanding your rights as a single parent allows you to make informed decisions, advocate for yourself and your child, and protect your interests. By familiarizing yourself with the legal landscape, you can better navigate issues related to care, financial support, and enforcement of maintenance orders.

Care, Contact, and Guardianship

One of the fundamental aspects of understanding your rights as a single parent is gaining clarity on care, contact, and guardianship. These legal concepts play a crucial role in establishing and asserting your rights as the primary caregiver. Let's delve into each concept:

- Care:** Care refers to the physical and day-to-day care of your child. It includes providing for their basic needs, such as food, shelter, clothing, and medical care. As a single parent, you have the responsibility of making decisions regarding your child's daily routines, education, and healthcare.
- Contact:** Contact refers to the right of the non-custodial parent to maintain a relationship with the child. It allows the non-custodial parent to spend time with the child, have regular communication, and participate in the child's life. Contact arrangements can vary and may include visitation schedules, phone calls, video chats, and other means of communication.
- Guardianship:** Guardianship relates to the legal authority and responsibility for making major decisions about the child's life. It includes decisions about the child's education, healthcare, religion, and general welfare. Guardianship can be held jointly by both parents or awarded solely to one parent, depending on the circumstances and the best interests of the child. Guardianship gives the parent the right to make important choices and act on behalf of the child.



Financial Support: Claiming Maintenance

Financial support, commonly known as maintenance, plays a vital role in ensuring your child's well-being. As a single parent, you have the right to claim maintenance from the other parent to help cover the costs of caring for your child. Understanding the process of claiming maintenance, the factors considered in determining the amount, and the legal recourse available in case of non-payment empowers you to secure the financial support your child deserves.

In the following sections, we will explore each of these topics in more detail, providing you with the necessary information to navigate the legal aspects of single parenting and effectively assert your rights. Remember, seeking professional legal advice tailored to your specific circumstances is always advisable for a comprehensive understanding of your rights and options.

What is maintenance?

Maintenance refers to the amount of financial support that someone with a legal duty to support another person must pay monthly. For example, both parents have a legal duty to support their children based on their own financial circumstances and the specific reasonable needs of the child. Each parent is responsible for contributing proportionately to the maintenance of their children according to their means.

Who is entitled to maintenance?

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

Who can claim 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?

A claim for maintenance can include expenses such as food, toiletries, clothing, accommodation (including utilities and household essentials), recreation, medical care, and education (including tertiary education). The amount of maintenance payable is influenced by the parents' standard of living and their standing in the community.

Steps to follow to apply for maintenance:

- Apply for maintenance at the magistrate's court in the district where you reside. If you are unsure, the local court can provide guidance on which court to approach.
- Complete and submit Form A: Application for a maintenance order (J101).
- Along with the completed form, provide proof of your monthly income and expenses, such as receipts for food purchases and utility bill payments.
- The court will set a date for you and the respondent (the person from whom you are claiming maintenance) to appear in court.
- A maintenance officer and investigator will investigate your claim and assess your circumstances.
- The court will serve a summons on the respondent, instructing them to appear in court on a specific date to address the matter.
- The respondent can choose to agree to pay the maintenance as claimed or contest the matter in court.
- If the respondent agrees to pay the maintenance as claimed, a magistrate will review the relevant documentation and make an order without requiring the parties to appear in court.
- If the respondent contests the claim, both parties and their witnesses will present evidence in court.
- If the court finds the person liable for paying maintenance, it will issue an order specifying the amount and the terms of payment.

Changing the amount of maintenance (variation or substitution):

If you need to increase or decrease the amount of maintenance paid, you can request a variation or substitution order. The process for this is as follows:

- **If you receive maintenance:**

1. Apply at the magistrate's court in the district where you and the child reside.
2. Complete the relevant application form and submit it, along with a statement of income and expenditure, to the maintenance officer.

- **If you pay maintenance but can no longer afford the amount:**

3. Apply for a decrease/variation order at the magistrate's office where your maintenance order was made.
4. Complete the relevant form and submit it to the maintenance officer.
5. Regardless of whether you are the recipient or payer of the maintenance, provide a complete statement of income and expenditure, along with a statement explaining the reasons for the application, to the maintenance officer. The same process as when a claim for maintenance is initially made will be followed.

The Role of the Maintenance Court

When a parent fails to provide reasonable child maintenance, the maintenance court plays a crucial role in enforcing compliance. This is done through a process called the Maintenance Court enquiry. Once a maintenance order is issued, it becomes a criminal offense to disregard it. In such cases, the court has the authority to issue warrants to attach the defaulter's property or salary.

The Maintenance Investigator

Each maintenance court has a maintenance investigator responsible for gathering evidence in maintenance court cases. However, it is important to note that due to the high volume of maintenance cases handled by the court, information about the availability of a maintenance investigator may not always be readily provided to individuals seeking assistance with their cases.

Making Decisions in the Maintenance Court

The decision-making process in the maintenance court can be challenging. The court can only issue an order for maintenance if there is evidence that the parent has the financial means to afford the claimed amount, and if the amount claimed is deemed fair. In practice, difficulties may arise when the mother alleges that the father can afford the required maintenance, but lacks concrete evidence to support her claim. On the other hand, the father may present evidence suggesting that he cannot afford the amount requested. In such cases, the mother may rely on her knowledge of the father's previous standard of living and their shared experiences while living together to argue that he can afford the required amount.

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.

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, 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.

Rights of unwed fathers

How do I obtain full responsibilities and rights to my child?

You acquire full parental responsibilities and rights in respect of your child if, at the time of your child's birth, you have been living with the mother in a permanent life partnership. You can also acquire full parental responsibilities and rights in respect of your child regardless of whether you have lived or are living with the mother of your child:

- consent to being identified or successfully apply to be identified as the child's father or pay damages in terms of customary law
- contribute or have attempted in good faith to contribute to your child's upbringing
- contribute or have attempted in good faith to contribute towards expenses in connection with the maintenance of your child for a reasonable period.

What if my child's mother disputes my version of the requirements for full responsibilities and rights?

If you and the child's mother disagree about the requirements for full responsibilities and rights, you must refer the matter for mediation.

What do full responsibilities and rights mean?

Once it is established that you comply with all the requirements for full responsibilities and rights concerning your child, you hold these responsibilities and rights together with your child's mother. Full responsibilities and rights include but are not limited to, the right to care for the child, to have contact with the child, and to be the guardian of the child. Being co-holders of these rights and responsibilities means that your child's mother must consider your views and wishes about any major decisions about your child. And both of you must always consider the views and wishes of the child, bearing in mind the child's age, maturity, and stage of development.

What are considered to be major decisions concerning my child?

Major decisions include:

- giving or refusing consent to
 1. the child getting married;
 2. the child being adopted;
 3. the child leaving the country;
 4. the child applying for a passport;
 5. the alienation or encumbrance of any fixed property of the child.
- issues affecting contact between the child and a co-holder of parental responsibilities and rights;
- the assignment of guardianship or care in respect of the child to another person;
- all those decisions which are likely to significantly change, or negatively affect, the child's living conditions, education, health, personal relations with a parent, or, generally, the child's well-being.

If I don't qualify for full responsibilities and rights, could I apply for limited rights to my child?

If you have an interest in the care, well-being, or development of a child, you may apply to court for an order granting you contact with, or care of, the child. The court may impose any conditions it deems necessary.

In considering your application, the court must take into account:

- the best interests of the child;
- the relationship between you and the child, and between any other relevant person and the child;
- the degree of commitment you have shown towards the child;
- the extent to which you have contributed towards expenses in connection with the birth and maintenance of the child;
- any other fact that should, in the opinion of the court, be taken into account.

If I have limited rights to my child, can these be extended?

Yes, you can apply to court to extend your limited rights in respect of your child. If you have contact rights with your child and you prove faithful in exercising those rights, you can apply to extend your rights to include care and/ or guardianship.

Where do I apply for rights to my child?

You should first address the issue through mediation. A Lawson Legal mediator can identify the issues and approach your child's mother for a joint session to settle them. We can assist you to draw up a parental responsibility and rights agreement, which can be registered with the family advocate or made an order of court to secure your rights.

If mediation is unsuccessful, you can apply for rights to any High Court or children's court within whose area of jurisdiction the child lives. The court will consider what is in the best interests of the child. It may then refuse your application or grant it either unconditionally or with such conditions as the court deems fit.

Do I have to pay maintenance to support my child?

Yes, you have a duty to maintain your child and the child has a right to receive maintenance from you. Your attitude towards and willingness to pay maintenance towards your child's upbringing is an important factor that the court takes into account when deciding if you qualify for any responsibilities and rights in respect of your child.

May I see my child any time I wish?

This is an aspect that will be decided when you enter into a responsibility and rights agreement with your child's mother. In the absence of an agreement, the court should allow you reasonable contact, which will depend on your own, your child's, and your child's mother's circumstances. This may be shared residency between you and the child's mother, visitations every alternate weekend and school holidays, or supervised visits on specified days.

Conclusion

Empowering yourself with knowledge of your rights as a single parent is the first step towards creating a stable and secure environment for your child. This chapter delved deeper into the legal aspects of single parenting, providing you with the necessary information to navigate care, financial support, and maintenance enforcement issues. Remember, seeking professional legal advice tailored to your specific circumstances is always advisable for a comprehensive understanding of your rights and options.

CHAPTER 2: A STEP-BY-STEP GUIDE TO DIVORCE



Considering Divorce: First Steps to Take

If you and your partner are contemplating divorce, there are important initial steps to consider. Here's what you should do:

1. **Marriage Counseling:** If you believe that intervention from a marriage counselor may help salvage your marriage, it is advisable to seek marriage counseling. Sometimes, a counselor can provide perspective and guidance that may contribute to resolving issues within the relationship.
2. **Mediation:** If divorce becomes inevitable, you should consider engaging in mediation. Mediation is a process where a neutral third party facilitates discussions between you and your partner, helping you reach agreements on various aspects of the divorce, such as child custody, division of assets, and spousal support. Mediation can be a less adversarial and more cooperative approach compared to traditional litigation.

Legal Grounds for Divorce in South Africa

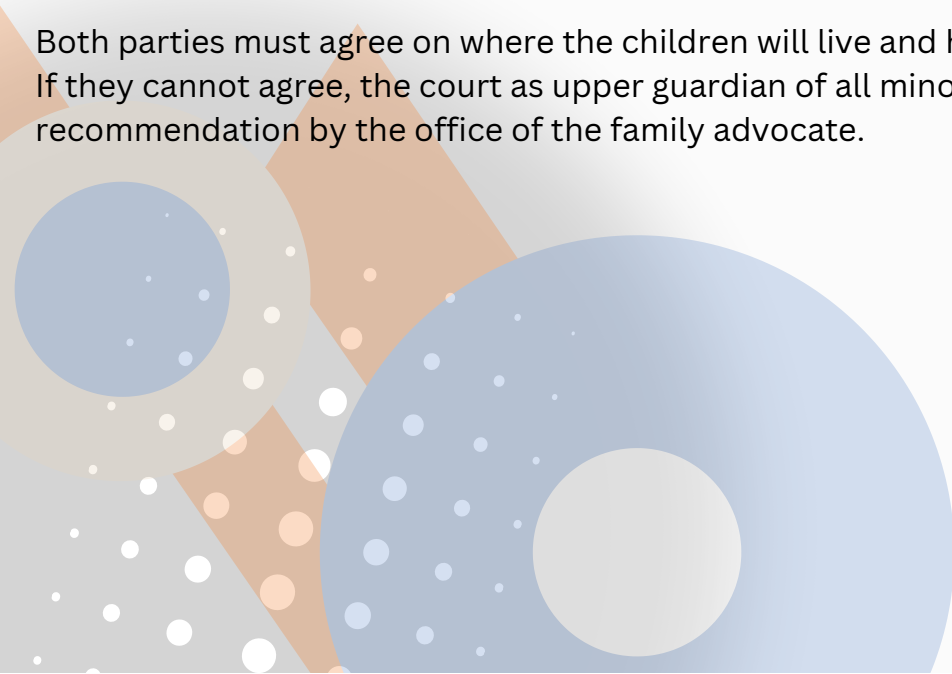
In South Africa, divorce is based on two primary grounds:

- **Irretrievable Breakdown of Marriage:** The court requires evidence that the marriage has irretrievably broken down. This can be demonstrated through various factors such as a spouse moving out of the house, abuse, adultery, habitual criminality, failure to support or provide a home for the family, refusal of marital privileges, a spouse's alcohol or drug addiction, obsession with a religious sect or political group, or loss of love between spouses. It is important to gather relevant evidence to support your case.
- **Mental Illness or Continued Unconsciousness:** If one of the spouses is suffering from mental illness or remains in a state of unconsciousness, this can also serve as grounds for divorce.

It is crucial to note that South African divorce law is not fault-based, meaning the court does not assign blame for the breakdown of the marriage. Instead, the focus is on establishing the irretrievable breakdown and seeking a fair resolution for both parties.

What will happen to the children?

Both parties must agree on where the children will live and how often the other parent will see them. If they cannot agree, the court as upper guardian of all minors will decide, usually on recommendation by the office of the family advocate.



Differences Between Contested and Uncontested Divorce in South Africa



Contested Divorce: A contested divorce occurs when the parties involved are unable to reach an agreement on one or more important aspects of the divorce.

In South Africa, contested divorces often involve disputes over the following:


1. **Grounds for Divorce:** The party initiating the divorce proceedings may allege specific grounds for the divorce, such as irretrievable breakdown of the marriage. In a contested divorce, the other party may contest or dispute these grounds, leading to a legal dispute.
2. **Child Custody and Access:** Disputes may arise regarding the custody and access arrangements for the children involved. Both parties may have differing opinions on who should have primary custody or how visitation rights should be structured.
3. **Division of Assets and Finances:** Contested divorces often involve disagreements over the division of matrimonial property, including assets, debts, and financial support arrangements.

Contested divorces can be lengthy and costly, especially if they require multiple court appearances and legal representation. High Court proceedings can further escalate the expenses involved.

Uncontested Divorce: An uncontested divorce occurs when both parties are in agreement on all essential aspects of the divorce. In South Africa, uncontested divorces have the following characteristics:

1. **Mutual Agreement:** The parties have reached a mutual understanding and are in agreement on matters such as child custody, division of assets, financial support, and any other relevant issues. They may have resolved these matters through negotiation or with the help of a mediator.
2. **Settlement Agreement:** In an uncontested divorce, the parties document their agreement in a settlement agreement. This agreement becomes part of the divorce order issued by the court. No further evidence or court appearances are necessary, streamlining the process.
3. **Lower Legal Costs:** Uncontested divorces generally involve lower legal costs compared to contested divorces. Since both parties are in agreement, the need for extensive legal representation and multiple court appearances is minimized.

Uncontested divorces provide an opportunity for a more amicable and efficient dissolution of the marriage, allowing the parties to move forward with their lives more quickly. They can also be less emotionally draining and more cost-effective compared to contested divorces.



What is a default divorce?

- A default divorce is a form of uncontested divorce.
- A court will grant a divorce by default if a summons has been served on the spouse and he or she does not respond within the allotted time period, the plaintiff can approach the court to have the matter set down for trial.
- It is however advisable to contact your spouse to find out why they are not defending the matter as they may come back at a later date to set the divorce aside on the ground that there was a good excuse for missing the deadline.

My spouse said that he/she won't 'give me a divorce'. What can I do?

Your spouse can oppose the divorce, but it is the Court that grants a divorce, not your spouse. If you convince the court that the marital relationship has irretrievably broken down, the court can grant a decree of divorce even if your spouse does not want to get divorced.

I know divorce can take a long time and in the meantime, we cannot agree on arrangements around the kids.

What can I do?

There is a process, called a 'rule 58' application, whereby you can ask the court to give an order regarding the care of and access to the children and maintenance pending the finalization of the divorce. You can even ask for a contribution to your legal costs. The family advocate will also get involved during the divorce process. You should also consider mediation at this time.

What does it mean to be married in and out of the community of property?

The different types of matrimonial property systems are explained below, and the system applicable to your marriage would have been determined when you got married, based on whether you entered into an antenuptial agreement. If no agreement was made, you are considered to be married in community of property. The main distinction lies between being married "in community of property" and "out of community of property."

When you are married "in community of property," your assets and your spouse's assets are combined into a joint estate, which is jointly owned by both of you. This is the default marital regime, and upon divorce, the assets in the joint estate are typically divided equally between you and your spouse. However, certain assets, such as inherited assets, gifts, or court-awarded money, may be excluded from the joint estate and considered the sole property of either spouse.

On the other hand, in a marriage "out of community of property," your assets and your spouse's assets are separate, and each spouse owns their own estate.

It's possible that you chose to get married "out of community of property with accrual." This is a combination of separate ownership and a sharing of assets acquired during the marriage. When divorcing, any growth in the estates during the marriage is divided equally between the spouses, meaning that the spouse whose estate experienced more significant growth will need to transfer assets or value to the spouse with less growth. The exact distribution of assets is determined by the antenuptial contract signed by the spouses.

What about my pension fund?

Regarding your pension fund, if you are married in community of property or married out of community of property with the accrual system, you need to consider the concept of "pension interest." This refers to the legal rights one spouse has in the other spouse's pension funds, provident funds, or retirement annuities.

In the case of a marriage out of community of property with the accrual system, the pension interest will only come into play when calculating the accrual. It is advisable to consult with an attorney who specializes in family law to guide you through the specific implications of your pension fund in your situation. They will be able to provide you with the necessary assistance and advice related to your pension fund and its treatment during the divorce process.

You can either indicate a percentage relating to the pension interest that must be paid out or an amount as long as the amount does not exceed the value of the pension interest.

If you have a pension interest and your spouse is entitled to it, then you should disclose this in your divorce summons. You should include what the spouse is entitled to and give the full particulars of the fund that the spouse can receive when the divorce order is given. This applies to both parties in the proceedings.

Ensure that you contact the relevant pension fund to confirm the exact wording for the summons.

What is the divorce process?

A divorce process is instituted by way of a divorce summons. The Divorce summons can be obtained at the Regional Courts or a party can approach an attorney to assist with the process. A divorce summons is unique in that it must be served personally on the defendant by the sheriff.

A spouse who wishes to dissolve their marriage must approach the High Court or the Regional Court of the Magistrate Court and have a summons issued. A court has a jurisdiction to hear a divorce matter:

- If the parties are domiciled (live) in the area of the jurisdiction of the court as at the date of divorce.
- If parties have been ordinarily resident in the area of jurisdiction and have been ordinarily resident in South Africa for a period of not less than a year (1 year) before the date of the institution of the divorce.

The Court Registrar will open a file, stamp the documents and allocate a case number. The documents will then be handed back to the plaintiff. The plaintiff will deliver two sets of these documents to the sheriff in the area where the Defendant works or reside. The sheriff will then serve the documents personally on the defendant and issue a return of service proving that the documents were served.

CHAPTER 3: CHILD CARE AND CONTACT AFTER DIVORCE

As the non-custodian parent, do I have the right to see and visit my child?

Yes. If one parent is awarded primary care of a child it does not mean that the non-custodian parent is deprived of all parental rights. You are entitled to have contact with your child unless a court orders otherwise. The non-custodian parent can exercise their contact rights by arrangement with the custodian parent either through mediation or by a court order. If the court does not say what the terms of the contact are then the custodian parent should allow you reasonable contact with your child.

What is “reasonable contact”?

To determine reasonable contact, factors such as where you stay in relation to your child, the age of the child, the relationship between you and your child, and any other factor that might be relevant to your circumstances will be taken into account.

In practice, reasonable contact can mean anything from shared residency to every alternate weekend and alternate school holidays. Shared residency can mean that the child stays with you the one week and with the other parent the other week.

Is my ex-spouse allowed to refuse me contact with my child?

It is a criminal offence for the custodian parent to unreasonably refuse or prevent you from having contact with your child or exercising your parental rights and responsibilities. The offending parent can be sentenced to a fine or imprisonment of up to one year. The custodian parent must advise you in writing of any change of their residential address. If this is not given, the custodian parent may be guilty of a criminal offence.

If contact with your child is part of your settlement agreement, your ex-spouse must comply with the court order or may be held in contempt of court.



How should I apply for contact with my child if I am already divorced and the court did not grant a contact order?

You have full parental responsibilities and rights in respect of the child if you were married to the child's mother at the time of the child's conception, birth, or at any time between the child's conception and birth unless a court order has forbidden you from exercising your parental rights.

If you have not been interdicted from having contact with your ex-spouse or the children, you can approach your ex-spouse to settle the matter without having to go to court. You may approach Lawson Legal to assist you and your ex-spouse to settle the dispute and to draft a parenting plan, which can be registered at the office of the family advocate or made an order of court.

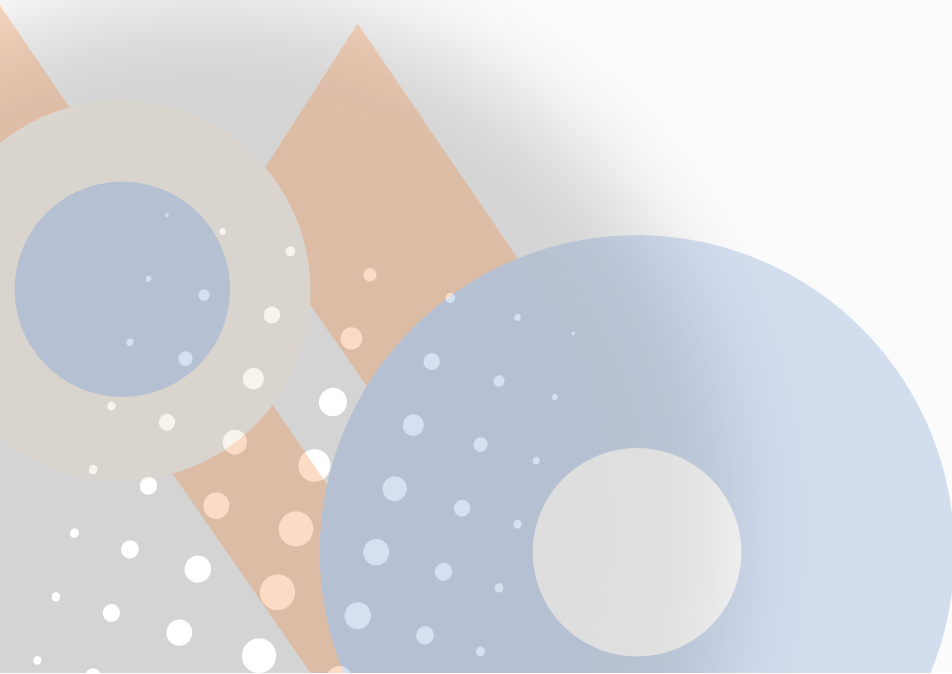
What will the court consider when granting a contact order?

The court will consider the following:

- the best interests of the child;
- the relationship between you and the child;
- the degree of commitment that you have shown towards the child;
- the extent to which you have contributed towards expenses in connection with the birth and maintenance of the child; and
- any other factor that should, in the opinion of the court, be taken into account.

If I am in the process of obtaining a divorce must I include the right to contact in my settlement agreement?

Yes. When people are getting a divorce the court must make an order regarding contact with the child.



If I am refused contact with my child by my ex-spouse, do I still have to pay maintenance?

Yes. Maintaining your child is your responsibility and having regular contact with your child is your right. You do not pay maintenance in order to see your child and one should not confuse rights with responsibilities.

How can my contact order be changed?

A parent may apply to a court to change, cancel or suspend a contact order:

- Variation or substitution (this means to change a contact order). For example, a father decides that he would like to see his child every 2 months instead of every alternate weekend because he is moving from Johannesburg to Cape Town.
- Rescission (this means to cancel a contact order). For example, a mother finds out that her child is being abused by the father of the child and applies to the court to have the contact order canceled.
- Suspension (this means postponing the contact order). For example, a father decides that he cannot manage his 12-month-old baby every second weekend and he would rather wait until the baby is two years old before he exercises stay-over contact with his child.

What happens if there is a disagreement between the parents?

Parents should always try to solve problems between themselves before taking any drastic steps such as taking the other parent to court. If there is a dispute between the biological parents of a child with regards to the best interest of the child that cannot be solved by the parents, they must seek to agree on a parenting plan through mediation before approaching the court.

A parenting plan may determine any matter in connection with parental responsibilities and rights, including, but not limited to the following:

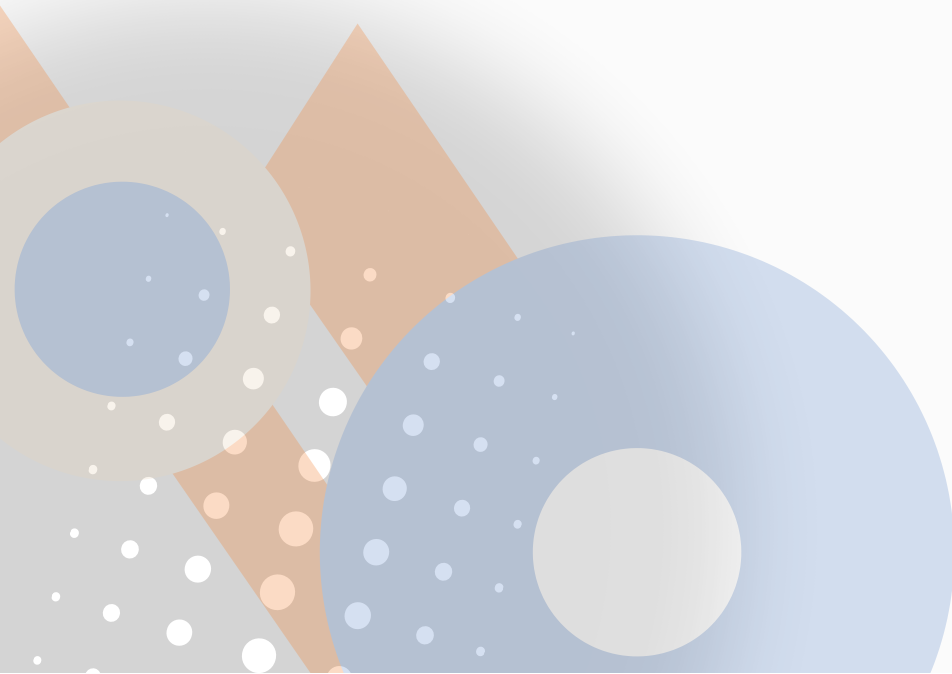
- where and with whom the child is to live;
- the maintenance of the child;
- contact between the child and any of the parties and any other person;
- the schooling and religious upbringing of the child.



It is a written agreement between co-holders (parents) of parental responsibilities and rights to determine how to exercise their respective responsibilities and rights in respect of a child.

A Lawson Legal mediator will be able to assist parents to find alternative solutions to their disputes without having to go to court. Should a dispute not be settled through assistance or mediation, parents may approach the family advocate with proof that the mediation process failed and follow the legal process in the courts.

A parenting plan must be in writing and signed by both parties. It may be registered with the family advocate or made an order of court.



CHAPTER 4: MEDIATION IN FAMILY LAW

Mediation is a voluntary and confidential process of resolving disputes through facilitated communication and negotiation. It involves a neutral third party, known as a mediator, who assists individuals or parties in conflict to reach mutually acceptable agreements. Mediation aims to promote open dialogue, understanding, and cooperation, ultimately leading to a resolution that satisfies the needs and interests of all parties involved.

In the context of family mediation, it specifically focuses on resolving conflicts and disputes related to family matters, such as divorce, child custody and access, parenting plans, spousal support, and property division. Family mediation provides a structured and supportive environment for separating or divorcing couples, co-parents, or other family members to discuss their concerns and work towards mutually beneficial solutions.

The role of the family mediator is to facilitate effective communication, ensure fairness, and guide the parties through the process. The mediator remains impartial and does not make decisions or impose solutions but assists in generating options and finding common ground. The mediator helps the parties identify their needs and interests, explore different perspectives, and develop agreements that are in the best interests of all family members, particularly children. There are several benefits to choosing family mediation over litigation or adversarial approaches to resolving family disputes. These include:

1. **Confidentiality:** Mediation provides a confidential environment where participants can openly discuss their concerns without fear of public exposure.
2. **Voluntary Process:** Parties voluntarily participate in mediation, giving them more control and ownership over the outcome.
3. **Cost-effectiveness:** Mediation is generally more cost-effective than going to court, as it avoids lengthy legal proceedings and associated expenses.
4. **Cooperation and Communication:** Mediation encourages parties to communicate and work together, fostering a cooperative and constructive atmosphere.
5. **Preservation of Relationships:** Mediation aims to help parties maintain or improve their relationship, which is particularly important in ongoing co-parenting situations.
6. **Customized Solutions:** Mediation allows for flexible and creative solutions that meet the unique needs and circumstances of the family.

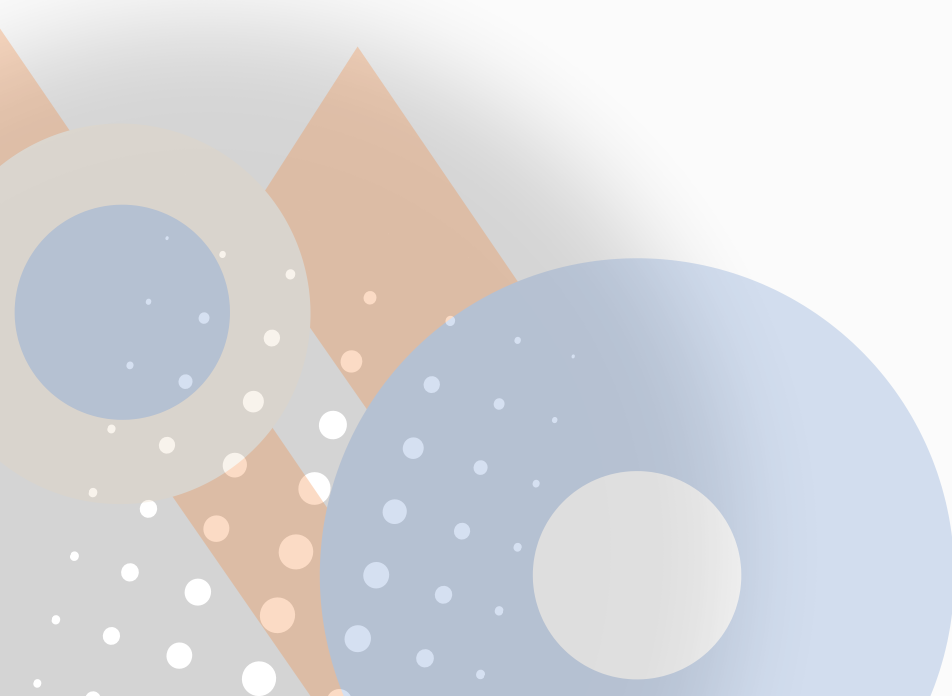


It's important to note that while family mediation can be highly effective in resolving disputes, it may not be suitable for all situations, such as cases involving domestic violence, child abuse, or extreme power imbalances. In such cases, other legal avenues may be more appropriate.

What is the mediation process?

The mediation process is a structured and collaborative approach to resolving conflicts and disputes with the assistance of a neutral third party, known as a mediator. The process typically follows a series of steps designed to facilitate open communication, identify common interests, and reach mutually acceptable agreements. While specific details may vary depending on the situation and the mediator's approach, the general mediation process can be outlined as follows:

- **Introduction and Opening Remarks:**
 - The mediator introduces themselves and explains their role in the mediation process.
 - Participants are provided with an overview of the mediation process, including its voluntary nature, confidentiality, and the principles of fairness and impartiality.
 - Ground rules and guidelines for respectful communication and cooperation are established.
- **Statement of the Problem:**
 - Each party is given an opportunity to express their perspective on the issue or conflict.
 - The mediator facilitates active listening and encourages parties to share their concerns, needs, and interests.
- **Information Gathering:**
 - The mediator may ask clarifying questions to gain a deeper understanding of the situation and the underlying issues.
 - Parties may be encouraged to provide any relevant documentation or information that can help in the decision-making process.
- **Exploration of Interests and Needs:**
 - The mediator helps parties identify and articulate their underlying interests, needs, and goals.
 - Participants are encouraged to express their priorities and desired outcomes.



Why choose mediation over litigation?

• It costs less

The average cost of a litigated maintenance matter (increase/ arrear maintenance) can easily be more than R30 000 and the average cost of a mediated matter is usually less than R4 500. When both spouses use one mediator they can share the cost. If they decide to mediate the dispute, they can expect to save more than 75% on legal costs. Should they choose to appoint an attorney, his or her fees should be discussed at the first consultation to avoid any later surprises. Litigation can easily trigger increased conflict, resulting in increased legal costs. A mediated divorce is typically settled in 6 hours or less. Traditional legal intervention through divorce attorneys is always available as the next step for those who cannot find a settlement through mediation.

• Control over decisions

Would you prefer to make your own decision regarding your family, or would you rather let someone else decide on your behalf? When a family dispute goes to trial, the court will decide what is best for you and your family. You will then have to abide by the court's decision. A better approach is to sit with your ex-partner and a Family Justice mediator and spend as much time as is needed to agree on the issues at hand. According to statistics, mediation takes 95% less time than court proceedings.

• Most cases settle

Did you know that most lawsuits settle on the doorsteps of the court? Why then not mediate your case from the outset? When the case is settled through mediation, the agreement can still be made an order of court.

• More enduring agreements

When "solutions" are imposed on people, they are more likely to resist them. A court may order certain specific conditions (such as a child visitation schedule) in a litigated divorce. This may cause one of the parties to comply reluctantly, leading to ongoing strife, friction, and misery. Dire People who work together voluntarily to create a shared, mutually beneficial plan have a vested interest in the success of the plan. There is a much higher likelihood of the parties abiding by such a mutual agreement and having less conflict in the future.

• Easier

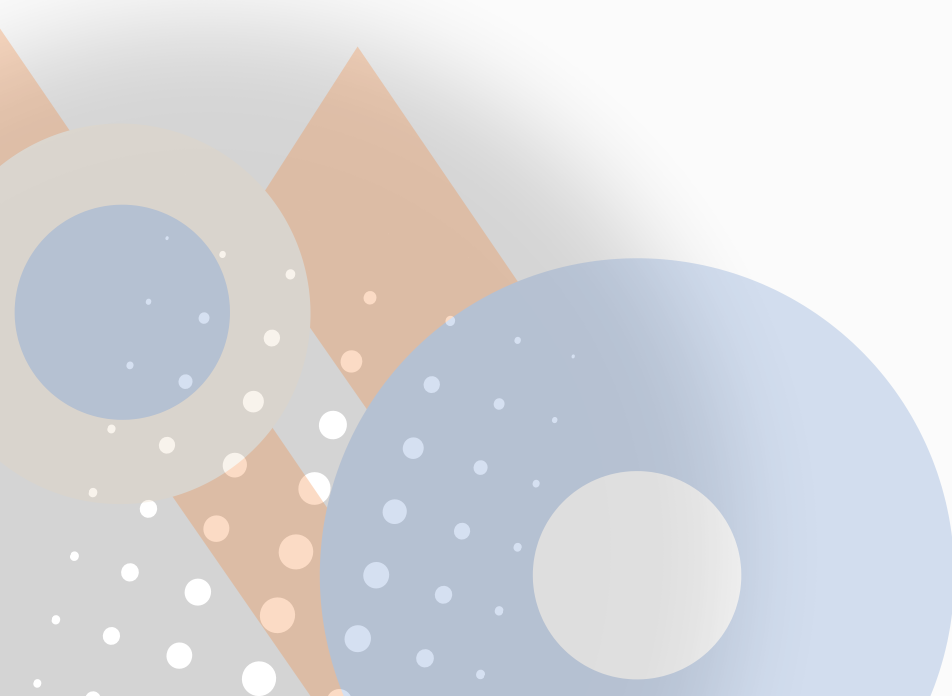
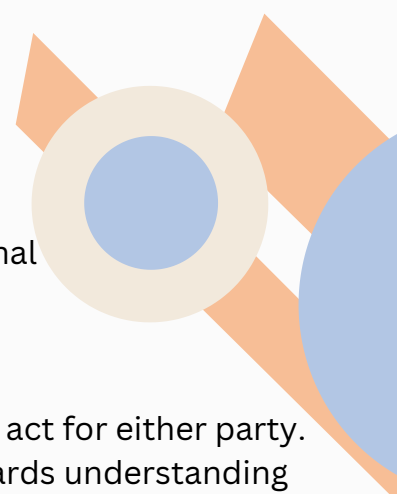
Mediation is the easier way. Less court. More control. Less stress. Lower costs.

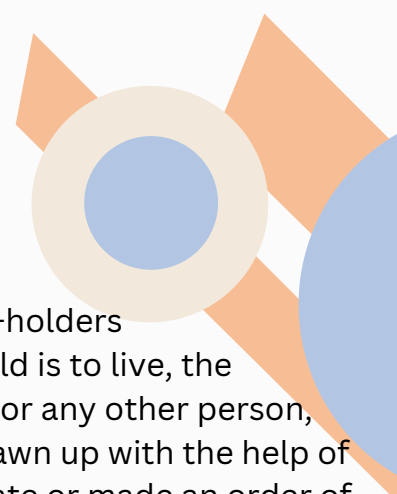
- **Less stress**

Compared to litigation, mediation is much less stressful. Lawson Legal mediators insist that the parties communicate in a respectful and non-threatening manner. The process is easier and less formal than traditional litigation.

- **Neutral perspective**

A Lawson Legal mediator is strictly neutral and impartial; he or she does not act for either party. The mediator asks the tough questions and steadily moves the process towards understanding and settlement. Mediation is strictly confidential and nothing that you say can be used against you in the future.





CHAPTER 5: CREATING A PARENTING PLAN

WHAT IS A PARENTING PLAN?

A parenting plan is a legally binding agreement between parents who are co-holders of parental responsibilities and rights, outline where and with whom the child is to live, the maintenance of the child, contact between the child and any of the parents or any other person, and the schooling and religious upbringing of the child. The agreement is drawn up with the help of a mediator, attorney, or social worker and registered with the Family Advocate or made an order of the court.

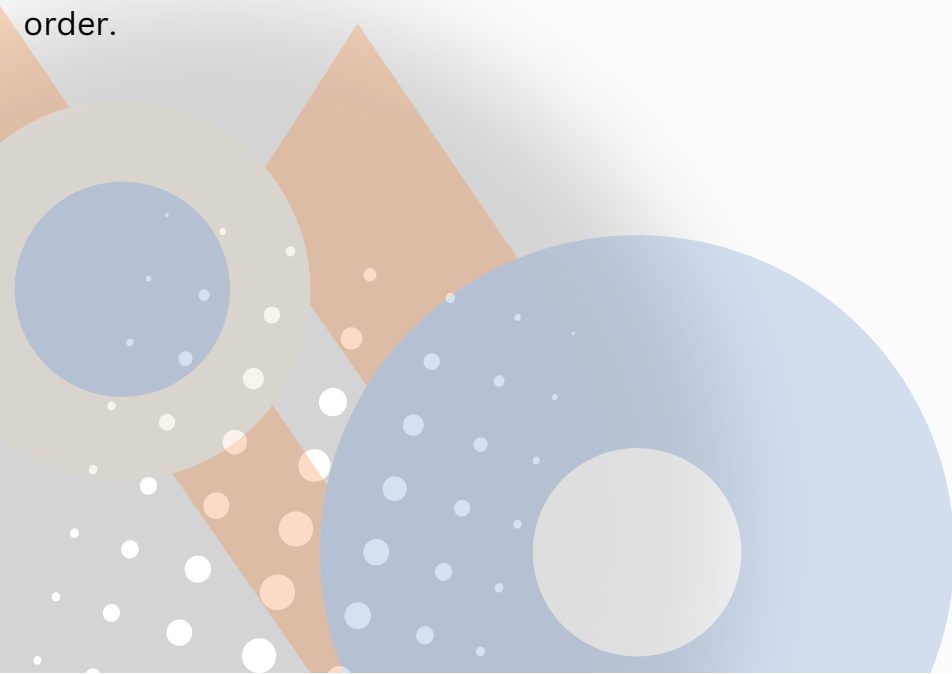
A parenting plan sets out clear and defined guidelines for co-parents on how to work together, communicate, and raise their children. It defines the roles and duties of co-parents thereby creating certainty for parents and children and protecting the best interests of the children. The certainty created by a parenting plan minimizes conflict between co-parents. It puts the child's best interests first and parents can focus on parenting their children rather than fighting with the other parent. Effective plans can make the transition to two separate households less stressful.

When are parenting plans necessary?

It is best not to wait until a conflict arises between co-parents; instead, co-parents should draft a parenting plan as soon as their relationship or marriage ends. A parenting plan is a good idea to prevent conflict or uncertainty over where or with whom the children will have a primary residence, contact, or care. It is necessary when parents are in conflict, or when parents want their rights and responsibilities defined.

How to draw up a parenting plan?

A lawyer, social worker, or another suitably qualified person like a mediator can assist parents in drafting a parenting plan. Lawson Legal has suitably qualified mediators that can assist parents through mediation to discuss and finalize a parenting plan. Once the parenting plan has been drawn up, it is signed and either registered with the family advocate or it can be made a court order.

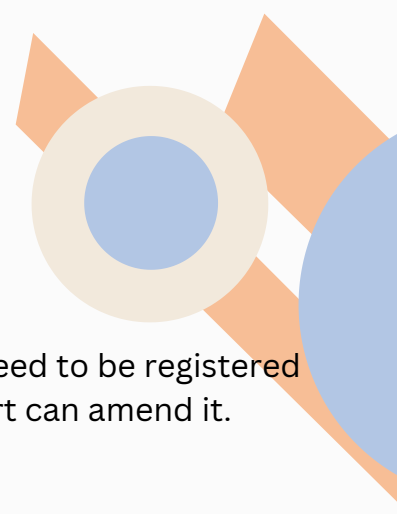
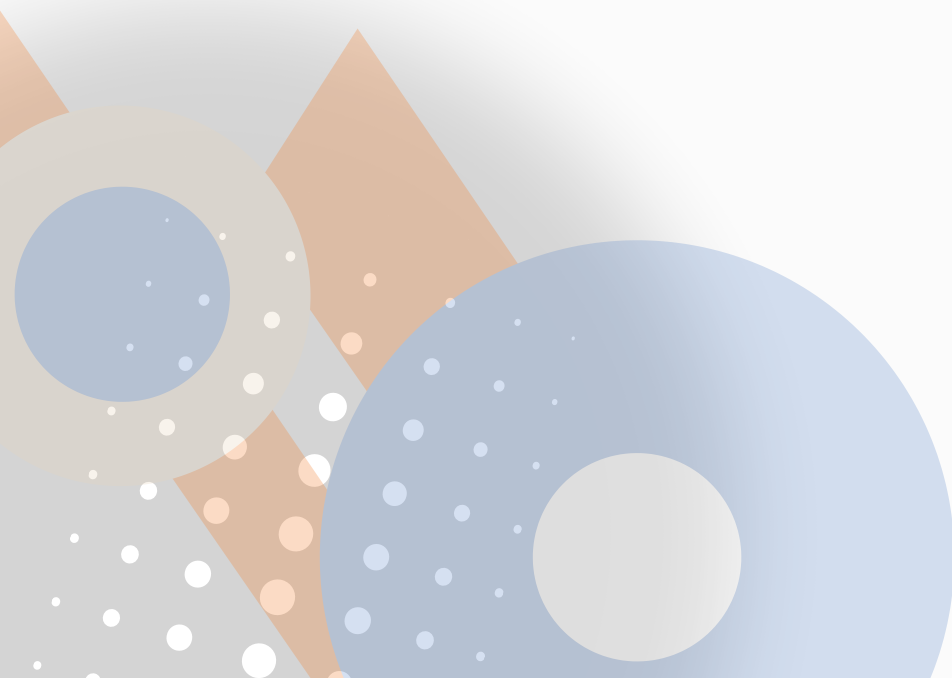


Would you be able to change a parenting plan?

A parenting plan should be reviewed regularly, if amendments need to be made, parents can consult with a mediator at Lawson Legal. The mediator will review and discuss the amendments. Once it is finalized and signed, if the original parenting plan was registered with the family advocate, it will need to be registered with the family advocate, or if it was made an order of the court, only a court can amend it.

How to enforce a parenting plan, if one parent does not honour the agreement?

A parenting plan is binding on both parents. If one parent is in breach, the other parent can approach the Children's Court or the Maintenance Court should the other parent fail to maintain in terms of the order. The parent breaching the order will be guilty of contempt of court and could face a fine or imprisonment.



Next Steps:

- 1. Reflect on Your Situation:** Take the time to reflect on the information provided in this booklet and how it applies to your specific situation. Consider your rights, responsibilities, and the best interests of your child.
- 2. Seek Legal Advice:** Consult with a family law attorney or legal professional specializing in family matters. They can provide personalized guidance based on the specific details of your case and help you navigate the legal process effectively.
- 3. Gather Documentation:** Collect relevant documents such as financial records, communication records, and any other evidence that may support your case or help in claiming maintenance.
- 4. Communicate with the Other Parent:** Establish open and respectful lines of communication with the other parent. Discuss your concerns, explore potential solutions, and consider mediation as a means of resolving disputes and reaching mutually beneficial agreements.
- 5. Consider Mediation:** If you encounter challenges in resolving family disputes, consider engaging in mediation. Mediation offers a collaborative and supportive environment to facilitate communication, understanding, and mutually acceptable solutions. Contact Lawson Legal to assist you with mediation.
- 6. Mediate a Parenting Plan:** Work with the other parent to create a comprehensive parenting plan that outlines parenting schedules, decision-making processes, and guidelines for effective communication. Focus on the well-being and best interests of your child as you navigate your co-parenting journey.
- 7. Prioritize Self-Care:** Taking care of yourself is crucial during these challenging times. Seek emotional support from friends, family, or support groups. Consider counseling or therapy to help you manage the emotional aspects of single parenting or co-parenting.
- 8. Stay Informed:** Keep yourself updated on any changes in family law or relevant regulations that may impact your rights and responsibilities as a single parent or co-parent. Attend workshops or seminars, read reputable resources, and stay connected with support networks.

Remember, every family situation is unique, and the next steps may vary depending on your specific circumstances. Be proactive, seek the necessary support, and take actions that prioritize the well-being and best interests of your child.

Resources for Further Assistance:

- 1. Legal Aid South Africa:** Provides free legal advice and assistance to individuals who cannot afford private legal representation. Visit their website or contact their helpline for more information.
- 2. Social Justice Network:** A professional association of accredited family mediators in South Africa. Their website provides a directory of qualified mediators who specialize in family disputes.
- 3. South African Maintenance Court:** Contact your local Maintenance Court for guidance on claiming and enforcing maintenance orders. They can provide information on the process, required documentation, and available resources.
- 4. Parenting Support Groups and Organizations:** Look for local support groups or organizations that focus on single parenting, co-parenting, or family law. They can provide valuable resources, advice, and emotional support.
- 5. Child Custody and Divorce Support Services:** Various organizations offer counseling, support groups, and educational programs specifically tailored to individuals going through custody battles or divorce. Research local resources in your area.
- 6. South African Human Rights Commission:** The commission provides assistance and guidance on human rights issues, including family law matters. Their website offers information on rights and resources available to individuals.
- 7. Community and Non-Profit Organizations:** Explore local community centers, non-profit organizations, and women's shelters that may offer legal clinics, workshops, or support services related to family law and single parenting.
- 8. Online Legal Resources:** Access reputable online resources that provide information on South African family law, maintenance, co-parenting, and dispute resolution. Be sure to refer to government websites, legal aid organizations, or reputable legal blogs for accurate and up-to-date information.

Remember consulting with a qualified legal professional is advisable for personalized advice based on your specific circumstances.



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Conclusion: Building Healthy Relationships and Resolving Family Disputes

We hope that this booklet has provided you with valuable information and guidance on navigating the complexities of family law, resolving disputes, and ensuring the well-being of your family. Remember, this booklet serves as a general resource, and it is always advisable to seek personalized legal advice based on your specific circumstances.

For further assistance or to discuss your specific situation in more detail, please contact: **Adv Jade Lawson at 061 672 3670 or email advjadelawson@outlook.com or www.lawsonlegal.co.za**

We are here to support you and provide the necessary guidance during these challenging times. Remember, you are not alone, and resources are available to help you navigate your journey as a single parent, co-parent, or someone going through a family law dispute.

Adv Jade Lawson