

HOW TO APPLY FOR A PROTECTION ORDER: A GUIDE FOR SOUTH AFRICANS

Adapted from information given by
The Department of Justice &
Constitutional Development
(Republic of South Africa)



JUST A REMINDER

Gender-Based Violence is violence directed against a person because of their gender. The Women's Legal Centre (2014) states that while all genders experience gender-based violence, the majority of victims are women and girls.

DIFFERENT FORMS OF ABUSE:

PHYSICAL ABUSE

EMOTIONAL

VERBAL ABUSE

FINANCIAL ABUSE

LAWS REGARDING DOMESTIC VIOLENCE:

- Domestic Violence Act 116 of 1998.
- Criminal Law Sexual Offences Amendment Act 32 of 2007.
- The Protection from Harassment Act 17 of 2011.
- Constitution of The Republic of South Africa.

SUPPORT

Should you or someone close to you need assistance, please reach out to the following organisations for support.

GBV COMMAND CENTRE

Call 0800 428 428

Send Please Call Me - dial *120*7867#

SMS 'Help' to 31531

LIFELINE'S DOMESTIC VIOLENCE HELPLINE

0800 150 150

MOSAIC

Telephone Counselling + Referrals for Survivors of Abuse

021 761 7585

(08h00 - 16h00)

RAPE CRISIS

24 Hour Support

English: 021 447 9762

Afrikaans: 021 633 9229

isiXhosa: 021 361 9055

Whats App: 083 222 5164

Who can apply for a protection order?

Any person who is a victim of an act of domestic violence may apply to a court for a protection order.

- An application may also be brought by any person who has an interest in the well being of a complainant e.g. parent, social worker, teacher etc.
- Any unassisted minor or any person on behalf of a minor may apply for a protection order.
- An application may be heard on camera (private).
- A complainant/respondent can have up to 3 people with them for support.
- A protection order is valid for life and is enforceable throughout South Africa.

PROTECTION ORDERS

A man, woman or any person can be guilty of, and be victims of domestic violence.

Any person who is a victim of an act of domestic violence may apply to a court for a protection order.



CAN I APPLY FOR A
PROTECTION ORDER?

Against whom may you seek a protection order?

It must be a person that you have a domestic relationship with, e.g.

- A person to whom you are or previously were married to, whether by civil or customary rites;
- Your partner (whether of the same or opposite sex) who lives or has lived together with you, even though you were not married to each other or are not able to be married to each other (if, for example, one of you was already married to someone else);
- The other parent of your child or persons who share parental responsibility with you for a child;
- Persons who are related to you by blood ties, marriage or adoption;
- A person with whom you shared an engagement, customary or dating relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration (e.g. one night stand);
- A person with whom you share or have recently shared the same residence.



STEPS TO TAKE TO OBTAIN A PROTECTION ORDER:

What must you do?

If you are a victim of any act of domestic violence, approach a local magistrate's court and request assistance to apply for a protection order. A clerk of the court will assist you to complete the necessary forms and take you before a magistrate who will determine whether to grant you an interim protection order or not.

Which court should you approach?

Approach the nearest magistrate's court where you live or work. If you were forced to leave your place of residence as a result of violence and you are now living elsewhere temporarily, you may approach a court closest to your temporary residence.

What is an affidavit?

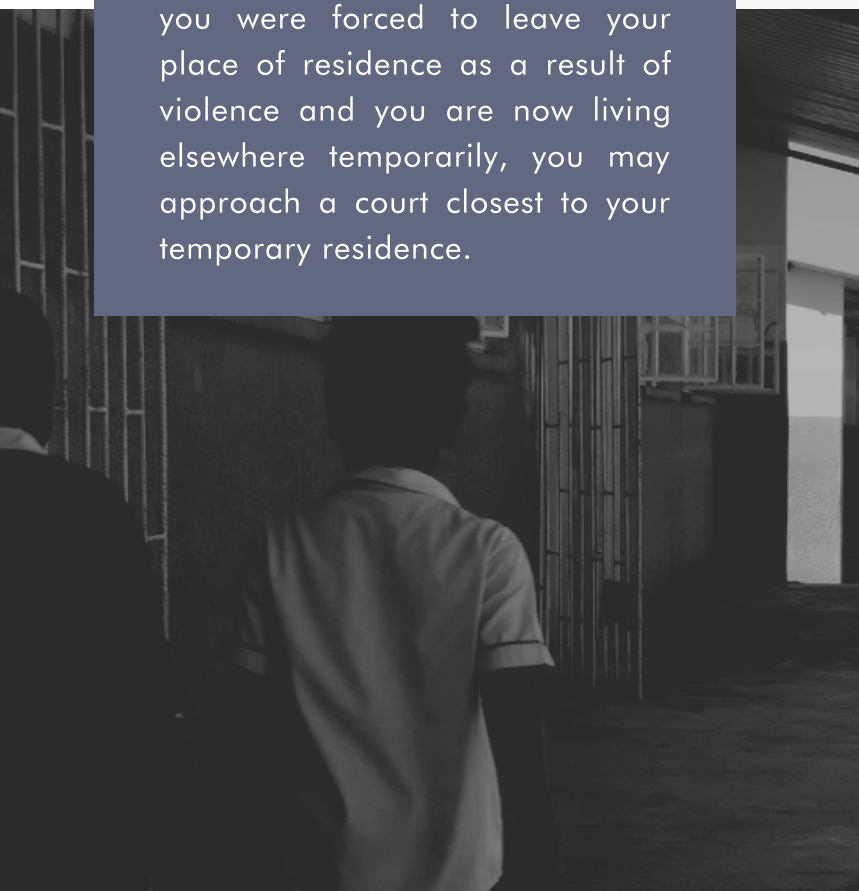
An affidavit is a statement made under oath. This means that a person who is making a statement has sworn to speak the truth and is aware that they will be prosecuted if it is found that contents (or parts of) an affidavit are untrue. It is a punishable offence in a court of law to make a false statement.

When can you apply for an interim protection order?

If a respondent is committing any acts of domestic violence you may apply for a protection order. A court will consider your application and if they are satisfied that there is sufficient evidence that:

- a. A person is committing or has committed an act of domestic violence and;
- b. Undue hardship may be suffered by an applicant as a result of such domestic violence if an interim protection order is not issued immediately.

Then a protection order will be granted.



INTERIM PROTECTION ORDER

What will an interim protection order state?

An interim protection order will request a respondent (a person who is committing the abuse) not to abuse an applicant in any specific manner, as alleged in an affidavit. For example an order may prohibit someone from sexual abusing you.

In extreme cases, a magistrate may consider it appropriate to prohibit a respondent from entering the shared house or certain areas of the shared house e.g. your bedroom.

If children are victims of abuse, a court may order that a respondent has no or limited contact with the children. A court may make an order for emergency monetary relief. This means that if you need to claim medical expenses or alternate accommodation costs which arose directly as a result of the abuse, you must provide proof of the expenses incurred and request a court to consider the application.

A court may order the police to seize a respondent's fire arm if they has made any threat on your life. To fully appreciate the nature of the alleged abuse, a court relies on your affidavit.

You must therefore provide a court with all the relevant information in your affidavit. For example: details of the incidents of abuse, date, place and nature of the last incident.

A court may not refuse to issue a protection order by saying that other legal avenues are available.



What do you do with an interim protection order?

An interim protection order must be served to a respondent as soon as possible. You cannot personally serve the order to a respondent as this will not constitute proper service. In other words, handing over an interim protection order is the responsibility of someone in an official capacity such as a police officer or sheriff. You must take an interim protection order to the Office of the Sheriff or to a nearest police station, and they are then responsible for taking it to a respondent's residential or work address. At a police station, please remember to take down the name and/or badge number of the police officer who you gave your order to.

This enables you to easily track an order at a later stage. Most police stations have a designated official to handle domestic violence matters.

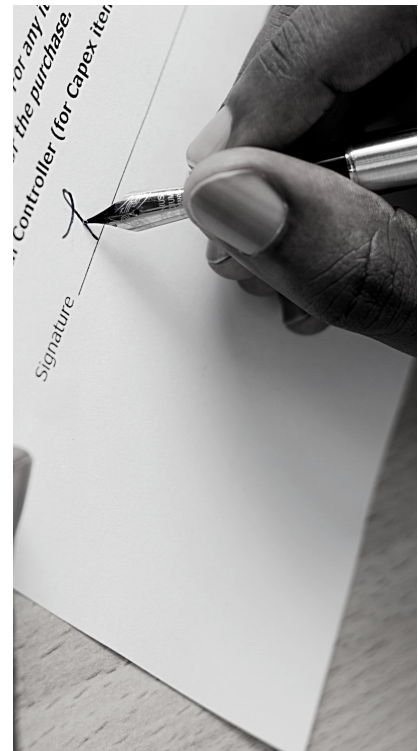
Arrange with a police officer to collect the Return of Service (Proof of Service Document). This proves that an interim protection order has been served on a respondent and that they personally received it.

Do not arrange for a police officer to deliver or post the Return of Service directly to a court, as this is often too slow and does not get to the court before the return date.

Remember that in terms of the law, the police must assist you in whatever manner stipulated in a court order, for example, with the collection of personal belongings, your ID document, children's books or clothes, etc. If you find that a police officer is unhelpful and refuses to cooperate in terms of an order, you may report this to the Independent Police Investigative Directorate (IPID) by calling 012 399 0000.

NB: Also note that it is not the duty of the police to assist you with the removal of furniture, computers, crockery, etc.

"Handing over an interim protection order is the responsibility of someone in an official capacity such as a police officer or sheriff."





**RESPECT MY
EXISTENCE OR
EXPECT MY
RESISTANCE**

What do you do with the Proof of Service?

After you have collected your returned Proof of Service document from the police, you will then need to provide this document to a clerk of the court as soon as possible. Once a clerk has this document, a suspended warrant of arrest for a respondent will be authorised by the court. This warrant may only be used against a respondent for any future violations of a protection order.

What is a Return Date?

It is a date set so as to allow a respondent an opportunity to show why a final order should not be granted against them.

What happens on the Return Date?

A court must hear the matter, and consider any evidence or any affidavit as well as oral evidence. If a court is satisfied that a respondent has committed or is committing an act of domestic violence, a protection order must be issued.

Will a respondent be arrested with a protection order?

A respondent will not be arrested upon receiving a protection order. It is only upon a breach of the terms of an order that a respondent may be arrested.

What is contempt of court?

It is when a respondent, who has breached an order, has failed to appear in a criminal court to answer charges filed against them.

What is a breach of a protection order?

It is when a respondent fails to comply with the conditions of a protection order. For example: when they repeat abusive behaviour stipulated in the protection order.



Will there be a formal hearing?

If a magistrate is unable to make a decision on affidavits presented to them because of a conflict of facts between your version and a respondent's version, i.e. if there is a dispute in the information given by both parties, a magistrate will postpone the matter for a formal hearing.

At a hearing, both parties will be required to give oral evidence under oath and to be cross-examined by the other party. However, a respondent is only allowed to ask a complainant questions via their attorney or a magistrate. Both parties may call witnesses to give any other supporting evidence that they need to prove their case, for example, medical certificates, hospital records, photographs, documents, etc.

What if a protection order is breached?

If a respondent breaches a protection order by continuing to subject you to any form of abuse described at the beginning of this booklet, you may lay a criminal charge at a nearest police station and hand in the warrant of arrest (provided to you with your protection order) to the police who will arrest them. Remember, however, that if a court finds that a warrant of arrest is used maliciously (to have a respondent arrested without just cause), then you may be prosecuted in terms of the Act.

Can the criminal charges be withdrawn?

Once a respondent has been arrested for a breach of a protection order, an applicant may not decide to withdraw the charges. The Director of Public Prosecution or a senior member of the National Prosecuting Authority (NPA) who the Director has appointed has sole discretion to withdraw charges.

Can I set aside an order?

You may, at any time, make an application to have an order set aside. It is however, at the discretion of a court as to whether or not to set aside an order.

This will mean that a protection order will be declared null and void.



The Protection Order Process:

Approach the Magistrates court & apply for an interim protection order.

STEP 01

- Go to your nearest magistrates court & ask for assistance with the protection order application.
- A clerk will assist you with the necessary forms, which includes an affidavit. This document is a statement that says what happened to the victim.

- The clerk will then take you before a magistrate (judge) who will determine whether to grant an interim protection order or not.
- They will listen to your story, read the affidavit or any other evidence you can give.
- Once this is done, they will issue you with an interim protection order.

STEP 02

Have your case heard at a Magistrate's court.

Serving the Interim Protection Order

STEP 03

- Your interim protection order must be given to the perpetrator after you have received it. **YOU ARE NOT MEANT TO GIVE THE ORDER YOURSELF.**
- Go to a police station and ask for the officer in charge of serving interim protection orders. Give them the order & the address of the perpetrator.
- Take down the officers name and badge number, this officer is responsible for delivering the order.
- The officer will give the perpetrator a "Return of Service" document.

- The court will inform you of the 'Return Date'. This is the date set for the magistrate to sit with all the evidence and determine if they want to upgrade the interim protection order to a full protection order (meaning it will be valid for LIFE!).
- The perpetrator can come into court and argue their case at this time as well as the victim.
- After hearing oral statements, looking at the affidavits and other evidence, the magistrate will then decide if they will issue the full order or not.
- If the perpetrator breaks the protection order, then the victim can take the order and warrant of arrest to the police station, and the police officer must arrest them.

STEP 04

"Return of Service" Document

Return Date & Final Protection Order

STEP 05

- Arrange for the police officer to collect the "Return of Service" document.
- Collect this document from the police and **TAKE IT BACK TO THE CLERK AT THE COURT YOURSELF.** Do not rely on the police to do this as they may deliver it late.
- Once a clerk receives this document, the court will issue you with a 'suspended warrant of arrest'. This can be given to the police if the perpetrator violates the interim protection order and they will then be arrested.

The Justice Desk

*Promoting the Power
of Everyday Activists*

Email: info@justicedesk.org
Website: www.justicedesk.org

NPO:186-262

BBBEE Level 1

Tel: 060 627 1963

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