



# DOMESTIC VIOLENCE AND PROTECTION FROM HARASSMENT

**LRC**

Legal Resources Centre

# Domestic Violence

## Domestic Violence Act 116 of 1998 ('the DV Act')

To provide for the issuing of protection orders with regard to domestic violence; and for matters connected therewith.

### WHAT IS DOMESTIC VIOLENCE?

On-going abuse (though it can be once off), with a pattern of force and control which increases over a period of time and applies to parties in a familial and domestic relationship which covers both heterosexual and same sex partnerships. The abuse and conduct of the perpetrator is one that causes imminent harm to the safety, health and well-being of the complainant.

### FORMS OF ABUSE UNDER THE DV ACT

#### • SEXUAL ABUSE:

Rape, attempted rape and indecent assault. On-going verbal abuse with sexual slurs such as bitch, whore and slut to new a few.

#### • EMOTION/VERBAL / PSYCHOLOGICAL ABUSE:

Constant insults ridicule or name calling. Repeated threats of violence or death to cause emotional pain.

#### • ECONOMIC ABUSE:

Selling of shared property such as livestock, matrimonial house without the consent of the complainant. Accessing or prohibiting access of a joint bank account for personal use without the consent of the complainant.

#### • INTIMIDATION:

Sending written or verbal death threats to a victim. As well as sending beheaded dolls, small coffins, dead flowers or dead pets to the complainant

#### • STALKING:

Constantly approaching the complainant and asking or demanding to talk to the complainant against their will.

#### • DAMAGE TO PROPERTY:

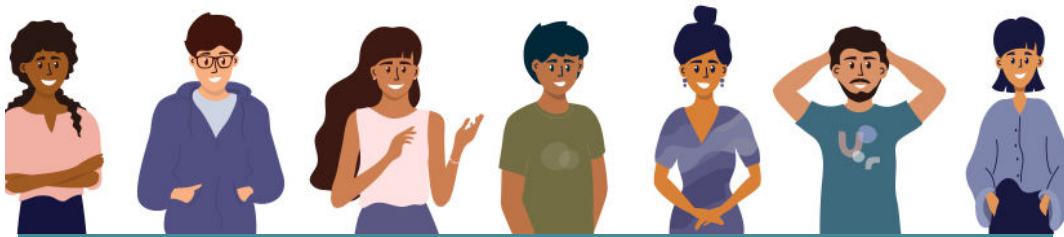
Breaking window to gain entry into a complainants' house. Cutting, breaking or damaging in any other manner shared furniture.

### WHAT IS A DOMESTIC RELATIONSHIP?

May be by marriage (civil Marriages Act, Civil Union Act, Recognition of Customary Marriages Act or Religious Marriages), blood relation, engaged, dating (Heterosexual or Homosexual), sexual relationship, or persons who share the same residence.

## WHO CAN APPLY FOR A PROTECTION ORDER?

- ANY PERSON WHO IS A VICTIM OF AN ACT OF DOMESTIC VIOLENCE;
- AN APPLICATION MAY ALSO BE BROUGHT BY ANY PERSON WHO HAS A MATERIAL INTEREST IN THE WELLBEING OF A COMPLAINANT ; AND
- ANY UNASSISTED MINOR OR ANY PERSON ON BEHALF OF A MINOR (SUCH AS A TEACHER, SOCIAL WORKER, CONCERNED COMMUNITY MEMBER OR RELATIVE).



### TO APPLY FOR A PROTECTION ORDER YOU NEED THE FOLLOWING INFORMATION/DETAILS:

YOUR NAME AND SURNAME;

YOUR PHYSICAL ADDRESS AND CONTACT NUMBER(S);

RESPONDENT'S NAME AND SURNAME;

RESPONDENT'S PHYSICAL OR WORK ADDRESS.

#### NOTE:

if you do not know the physical/work address of the respondent, you have to avail yourself to accompany the police officer who will be tasked with serving the application on the respondent. Your duty is to point out and show the police, you need not step outside of the vehicle for safety purposes.

## VALIDITY PERIOD OF A PROTECTION ORDER IN TERMS OF THE DV ACT:

A protection order is valid for a lifetime. The order is enforceable throughout South Africa regardless of the area of jurisdiction of the court it was granted.

# Protection from Harassment

## Protection from Harassment Act 17 of 2011 ('the PH Act')

**To provide for the issuing of protection orders against harassment; To effect consequential amendments to the Firearms Control Act; And to provide for matters connected therewith.**

### WHAT IS HARASSMENT?

Direct or indirect engaging in conduct that the respondent knows or ought to know causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably:

- Following you;
- Watching you;
- Being approached in a threatening manner;
- Hanging around work, school, home or any place the complainant happens to be;
- Communicating with the complainant verbally, electronically (including but not limited to, social media, SMS, WhatsApp and emails) and any other way; and
- Sending unwanted letters, packages, faxes, emails or any other objects.

### SEXUAL HARASSMENT IS ALSO INCLUDED UNDER THE PH ACT.

### YOU ARE BEING SEXUALLY HARASSED WHEN:

- You receive unwelcome sexual attention from a person that makes you feel uncomfortable;
- You receive unwelcome behavior, suggestions, messages or remarks of a sexual nature that you find offensive, intimidating or humiliating;
- You receive a promise of reward for a sexual request;
- You receive a threat for not complying with a sexual request.
- Receipt of unsolicited material that is sexual in nature

## WHO CAN APPLY FOR A PROTECTION ORDER IN TERMS OF THE PH ACT?

• ANYONE WHO IS EXPERIENCING HARM OR HARASSMENT IN TERMS OF THE FACTORS LISTED ABOVE. A THIRD PARTY MAY APPLY FOR A PROTECTION ORDER ON BEHALF OF SOMEONE WHO IS EXPERIENCING HARASSMENT IN TERMS OF THE ACT.

• A THIRD PARTY NEEDS WRITTEN PERMISSION AND IN INSTANCES WHERE THE COMPLAINANT IS A MINOR OR CAN PROVE THAT THE COMPLAINANT DOES NOT HAVE THE MENTAL CAPACITY TO DO SO.

### TO APPLY FOR A PROTECTION ORDER YOU NEED THE FOLLOWING INFORMATION/DETAILS:

YOUR NAME AND  
SURNAME;

YOUR PHYSICAL ADDRESS  
AND CONTACT NUMBER(S);

RESPONDENT'S NAME  
AND SURNAME;

RESPONDENT'S PHYSICAL  
OR WORK ADDRESS.

If you do not know the physical/work address of the respondent, you have to avail yourself to accompany the police officer who will be tasked with serving the application on the respondent. Your duty is to point out and show the police, you need not step outside of the vehicle for safety purposes.

You may also apply for a protection order if you do not know the person or cannot identify the person that is harassing you. In this instance you provide the number/ email address that could be useful for tracing the respondent's identity.

## VALIDITY PERIOD OF A PROTECTION ORDER IN TERMS OF THE PH ACT:

A protection order is valid for five years at a time. The order is enforceable throughout South Africa regardless of the area or jurisdiction of the court it was granted.

## WHERE CAN YOU APPLY FOR A PROTECTION ORDER IN TERMS OF BOTH THE DOMESTIC VIOLENCE ACT AND THE PROTECTION FROM HARASSMENT ACT?

- Approach the nearest magistrate's court where you live or work.
- Request assistance to apply for a protection order.
- The clerk of the court will assist you to complete the necessary forms and take you before a magistrate who will determine whether to grant an interim protection order or not.

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 INTERIM PROTECTION ORDER?

The court will issue this order if it is satisfied that there is prima facie evidence that the respondent is committing or has committed an act of domestic violence and that the complainant will suffer undue hardship if the order is not made.

As soon as the order is issued, a copy of the interim order, application and evidence must be served on the respondent by a member of the SAPS or the sheriff. The interim order instructs the respondent to show cause (opportunity to seek legal assistance or defense) on the return date specified by the court why a final protection order should not be made. Should the court not be satisfied with the facts and evidence before it, an interim order will not be issued. The matter will then be set down for hearing where the complainant and respondent must attend in order for the court to consider their version of events and evidence.

A court may also issue an order for emergency monetary relief in terms of the DV Act. This means that if you need to claim maintenance or any other expense which arose directly as a result of the abuse. The complainant must provide proof of such expenses incurred for the court to consider with the application for a protection order.

Should the respondent not appear on the return date, the magistrate will proceed to grant the protection order. If the respondent appears, a hearing will be held and an order will be granted in light of the facts and evidence from the hearing.

An interim order and a final protection order have no force and effect until it has been served on the respondent.

When a final protection order is granted, the magistrate will also issue a warrant of arrest that will be held in abeyance in case the respondent contravenes the terms of the protection order.

A protection order may be varied or set aside upon good cause being shown. Once the court is satisfied that the application was made freely and voluntarily, the court will proceed to vary/set aside the order.

## USEFUL CONTACTS:

**These are organisations you can approach if you are unsure how to proceed once you experience abuse or not sure what the next step is once you have already gone to the police or Court.**

 People Opposing Women Abuse (POWA)

Tel: +27 11 642 4345

 SAPS Crime Stop

Tel: 0860 010 111

 Lifeline

Tel: +27 86 132 2322

 SAPS Emergency number

Tel: 10111

 National Network of Violence Against Women

Tel: +27 12 321 4959 / 4047 / 0075

 Women Abuse Help Line

Tel: 0800 150 150

 Stop Women Abuse Helpline

Tel: 0800 150 150

 Lifeline

Tel: +27 11 838 6601