

HOW TO OBTAIN A DOMESTIC VIOLENCE ACT PROTECTION ORDER

What is a Domestic Violence Act Interdict?

It is a written court order granted by a magistrate or a judge which will tell a person, usually the man in a family, what he must do or must not do in relation to his wife/partner and/or children.

For example, the court order or interdict could tell a man that he must leave the family home and allow his wife and children to remain. It could also tell a man that he must stop abusing his wife or his children. This also applies to same-sex relationships.

STEP 1

How to obtain an interdict under the Act

Who can apply for an interdict?

- Anyone who is being abused by her husband, partner, person she is having an intimate relationship with or dating, or family member
- Any child who is being abused by a family member
- Anyone who has an interest in the well being of a woman or child, including a family member, social worker, counsellor, health services worker, teacher or police person

What constitutes abuse?

- Physical abuse, sexual abuse, emotional, verbal and psychological abuse (persistent shouting at you, belittling or putting you down or threats)
- Economic abuse (depriving you of money that you need in order to survive or of basic necessities, like household goods, especially where the abuser will not let you go out and work to earn your own money)
- Intimidation, harassment, stalking
- Any other controlling or abusive behaviour

STEP 2

Where can a woman apply for a Protection Order?

- Go to your closest magistrate's court and tell the clerk of the court that you want to apply for an interdict (the High Courts can also issue them – but this will be expensive and you will need a lawyer to help you). Someone, such as a paralegal, may assist you to obtain the interdict through the magistrate's court

STEP 3

To whom should she apply for a Protection Order?

- She should apply to the clerk of the court to obtain the Protection Order. S/he will ask her to fill in an application form and write an affidavit in which she explains why she wants the Order (tells her story) and explains what order she wants the court to make (e.g tell her husband to stop beating her, tell her boyfriend not to come to her house).

STEP 4

Does she have to appear before a judge or magistrate to obtain a Protection Order?

- No, the clerk of the court will take the application to the magistrate who must consider it as soon as possible. After reading the application, and if s/he feels that they don't have enough information, the magistrate might ask her to give more evidence (either written or oral)

STEP 5

When does the Protection Order come into force?

- If the magistrate thinks that she will suffer undue hardship if s/he does not issue an order *immediately*, then s/he will issue a *temporary* interdict, and will order that the respondent (the person who is doing the abusing) come to court on a certain day to explain why a *final* interdict should not be issued against him. The temporary interdict will apply until the court day. On the court day both she and the respondent will have to appear in court and give evidence before a magistrate. Both of them may be represented by lawyers if they can afford it.
- If the magistrate thinks that she is being abused but does not think that she will suffer undue hardship if s/he does not make an *immediate* order, s/he will not issue a temporary interdict but will just order that the respondent appears in court on a certain day to explain why a *final* interdict should not be made against him. She will also have to appear in court on that day to explain her case. If she is successful the magistrate will grant her the interdict.
- When issuing an interdict the magistrate will also issue an arrest warrant which will give the police the power to arrest the respondent if he breaches (does not obey) the interdict.

STEP 6

What should the woman do next?

- She should get a copy of the interdict from the clerk of the court as well as the original arrest warrant.
- The interdict will only begin to operate once it has been served on the respondent by either the clerk of the court, the sheriff or the police. If she cannot afford to pay the fee for this service, then she must state this in her application for the interdict and the State will have to pay (or make an

alternative arrangement to service by the sheriff eg maybe getting a peace officer to serve it)

- Hopefully the man will respect the court order and the abuse will stop.

What can the magistrate order in the Interdict?

- That the respondent stop assaulting her and / or her children or abusing her and / or her children in any particular manner
- That the respondent stays away from the house that she and / or her children share with him, or any part of that house
- That the respondent stays away from her house if she lives separately from him
- That the respondent stays away from her place of work
- That the respondent pays her rent, mortgage and or emergency financial relief
- That the respondent hand over any firearms or dangerous weapons
- That the respondent is not allowed access to her children, or that he can only see them under certain conditions (i.e only at a certain time and only in a certain place and with certain people present)
- Anything else that s/he thinks is appropriate in the case

STEP 7

What must the woman do if the man abuses her or the children again?

- She must go to the police station, together with her copy of the interdict and the arrest warrant. She will have to make an affidavit explaining how the respondent breached the interdict

STEP 8

What action should the police then take?

- The police officer must arrest the respondent if she is in danger of being harmed again
- The police must tell her that she has the right to lay a criminal charge if he has assaulted her or committed any other criminal act, and the police must also assist her to find a place of safety and get medical assistance if she needs it

STEP 9

What happens to the man after he has been arrested?

- If arrested, the respondent will be taken to jail, and will appear before a magistrate on a charge of having breached the interdict.
- If he is not arrested, he will be told to appear before the court on a particular day to face charge of having breached the interdict

STEP 10

What penalty or fine may be imposed upon him?

- If he is found guilty he will be sentenced to a fine or imprisonment for up to 5 years.