

ASHLEY SLAMAT
— ATTORNEYS AT LAW —
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**DOMESTIC VIOLENCE ACT
116 OF 1998**

The purpose of this act is to provide for the issuing of protection orders with regards to domestic violence and for matters connected thereto.

This Act recognise that domestic violence is a serious social evil in South Africa, leaving many vulnerable victims with ineffective remedies to protect themselves This Act maximize the protection to victims of domestic violence according to the Constitution and the rights in the Bill of Rights.

Section 1: Definitions

“damage to property” – is the willful damaging / destruction of property belonging to a complainant or in which the complainant has a vested interest.

“dangerous weapons” -

“domestic relationship” – a relationship between a complainant a respondent in the following ways:

- i. marriage,
- ii. live/lived together in a relationship in the nature of marriage(same sex/not),
- iii. parents of child/persons who have/had parental responsibilities for a child,
- iv. family members related by consanguinity, affinity or adoption,
- v. are/were in a engagement, dating/ customary relationship, including an actual/perceived romantic, intimate/sexual relationship of any duration or
- vi. they share/hared the same residence.

“domestic violence” – physical, sexual, emotional, verbal, psychological, economic, intimidatory abuse, harassment, stalking, damage to property, entry into te complainant’s residence without consent if the parties don’t share the same residence or any other controlling or abusive behaviour towards a complainant and this behaviour cause imminent harm to health, safety or wellbeing of the complainant.

“respondent” – any person who is / has been in a domestic relationship with a complainant and who has committed or allegedly committed an act of domestic violence against the complainant.

Section 2: Duty of the South African Police Service to render assistance to the complainant as may be required in the circumstances, or if it s reasonably possible to do so at the scene of the domestic violence or as soon thereafter as possible. The Police

can arrest the respondent without a warrant at the scene of the incident of the domestic violence (Section 3).

Section 4: The complainant can apply for Protection order against the respondent by an application at the court her/himself or by a representative, with the complainant's written consent.

- This person can be a legal representative, counselor, health service provider, member of the Police Service, social worker or teacher.
- No written consent is necessary when the complainant is a minor, mentally ill, unconscious or a person whom the court deem to be unfit to give such consent.
- This application can be brought to the court outside normal court hours if the court is satisfied that the complainant may suffer undue hardship if it is not granted on such day.
- The court must consider this application as soon as possible and take in consideration all additional evidence as it deems fit (Section 5).
- This section also states that the application and evidence why the application should or shouldn't be granted, together with the Interim order must be served on the respondent within 10 (ten) days of the application considered by the court.

Section 6 deals with the decision of the court for the final Protection order, the appearance of the respondent in court and hearing evidence in regard hereto.

Section 7: Actions and/or entry into premises of the respondent the court can prohibit.

- This goes further to describe which additional conditions the court may impose on the respondent by the order to protect the wellbeing, health and safety of the complainant.
- This section also specifically states that the complainant's address must be excluded from the order, unless the nature of the order necessitates the inclusion of such address.

Section 8: A warrant of arrest may also be authorised to be issued together with the protection order by the court.

- This warrant will stay effective until the protection order has been executed, is cancelled, lost or destroyed.
- An arrest can be made by the South African Police Service when the complainant hands the warrant together with an Affidavit, describing which part of the

protection order has been contravened, to the Police. Dangerous weapons can also be confiscated by the Police if ordered to do so by the Police (Section 9).

Section 10 described the circumstances in which the protection order can be varied or set aside by the court.

Section 12 list which court will have jurisdiction in matters of domestic violence.

- Courts within the area in which the complainant permanently or temporarily resides, carries on business or is employed or where the respondent resides, carries on business or is employed or the area in which the cause of action arose.

Section 14: Any party to proceedings according to this Act may have legal representation.