

WEBINAR HANDOUT



Webinar: **HOW TO SUBMIT YOUR COMPLETED MAINTENANCE APPLICATION FOR TO THE MAINTENANCE COURT**

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Discussion topics for today's lunch and learn:

- Everything you need to take to court to fast-track your maintenance application
- Submission of an additional founding affidavit in support your maintenance application form
- In what order should all documents be submitted?
- Practical tips and common problems when submitting your maintenance application form to court
- What will happen next if I submit my application form and documents to Maintenance Court?

Everything you need to take to court to fast-track your maintenance application

Generic documents required for a J101 Form, or a maintenance application, include :

1. An identity book (green book with your photo) or passport or drivers license and/or immigration permit;
2. Certified copies of the child/children's birth certificates;
3. Three months bank statement (the latest three months');
4. Three months proof of income (payslip) or the signed letter from the employer confirming your income (only necessary if you are working);
5. Proof of physical/work address of the person responsible for paying the maintenance money (i.e where you stay);
6. Proof of applicant's address. This can be a utility account or affidavit to the effect that you stay at a certain house;
7. Full name of parent/person responsible for paying the maintenance money;
8. Copy of Decree of Divorce (in the case of divorce).

The details required of the respective parties can be summarized as follows:

<i>Maintenance applicant:</i>	<i>Person responsible for paying maintenance:</i>
ID book/ passport/ driver's license and/or immigration permit	Full name
Certified copies of children's birth certificates	Proof of home or work address and details
Last three months' bank statements	Copy of decree of divorce (if so)
Three months' proof of income (payslip)	List of income and expenditure
Proof of address	

The form will require applicant to list their expenditure, such as water and lights bill, till slips for groceries, school expenses; medical and travel receipts, clothing accounts, etc. Proof as to these expenses must therefore be provided to be able to apply for maintenance. The respondent will similarly also have to list their income and expenditure, and provide proof as such. From these documents, the parties' financial position will be assessed to determine what amount, if any, of child maintenance should be claimed and/or awarded.

Discretionary system used (no fixed formula) revisited

In South Africa, we follow a discretionary system as to the determination of child maintenance. This notion is contained in the Act and allows a presiding officer to exercise their judicial value judgements as to what a fair amount of maintenance may be in the circumstances.

The provision reads as follows:

15 Duty of parents to support their children

(b) Any amount so determined shall be such amount as the maintenance court may consider fair in all the circumstances of the case.

The maintenance amount must ultimately be fair in the circumstances. A maintenance court must therefore exercise its statutory discretion to ensure that a fair amount of maintenance is ordered in light of the financial position of the parties and needs of the child. 'Fairness' in this context does not necessarily mean 'equal' and the parties may not agree with the determination as to fairness on the facts. However, a maintenance court can promote fairness by avoiding the awarding of arbitrary child maintenance amounts and by duly applying its mind to the facts at hand. Fairness in this regard will also give effect to what is truly in the child's best interest, as discussed previously.

Parties can therefore use the guidance given in the *Acutt*-principles and so forth, but they must ensure that the amount is indeed fair and reasonable. Therefore, the guidelines in case law can be used to establish a rough idea which is then further fleshed out by the specific needs of the particular child that needs to be maintained.

Submission of an Excel spreadsheet with detailed expenses and how it is split between the complainant and the children in support your maintenance application form

MONTHLY EXPENSES: AVERAGE OVER 3 MONTHS FROM DECEMBER 2022 TO E 2 children (6 years and 17 years)

Expense	Complainant	Child 1 (6)	Child 2 (17)	Total	Calculation based on	Reasons:
Lodging (bond /levy / rent)	R 2 500,00	R 2 500,00	R 2 500,00	R 7 500,00	Section 15(3) discretionary	Shared equally: Children has their own rooms, have use of the bathroom, kitchen and living room (worked out per area)
	R 3 500,00	R 2 000,00	R 2 000,00	R 7 500,00	Section 15(3) discretionary	Shared: children own room, shares proportionate the common areas such as bathroom, kitchen and living room
	R 3 750,00	R 1 875,00	R 1 875,00	R 7 500,00	Accutt principle	Share allocation 2 shares to adult and 1 share for children
Groceries / food	R 3 000,00	R 1 500,00	R 1 500,00	R 6 000,00	Accutt principle	Share allocation 2 shares to adult and 1 share for children
	R 2 400,00	R 1 200,00	R 2 400,00	R 6 000,00	Section 15(3) discretionary	Shared: mom eats 40%, 17 year old eats 40% and 6 year old eats 20%
	R 2 400,00	R 1 200,00	R 2 400,00	R 6 000,00	Section 15(3) discretionary	Shared amended Accutt as if 17 year old is an adult (divided by 5)
Toiletries	R 1 000,00	R 250,00	R 250,00	R 1 500,00	Section 15(3) discretionary	Based on real usage
Household cleaning material	R 1 000,00	R 1 000,00	R 1 000,00	R 3 000,00	Section 15(3) discretionary	Shared equally: Children has their own rooms, have use of the bathroom, kitchen and living room (worked out per area)
	R 1 400,00	R 800,00	R 800,00	R 3 000,00	Section 15(3) discretionary	Shared: children own room, shares proportionate the common areas such as bathroom, kitchen and living room
	R 1 500,00	R 750,00	R 750,00	R 3 000,00	Accutt principle	Share allocation 2 shares to adult and 1 share for children
Electricity	R 700,00	R 350,00	R 350,00	R 1 400,00	Accutt principle	Share allocation 2 shares to adult and 1 share for children
	R 466,67	R 466,67	R 466,67	R 1 400,00	Section 15(3) discretionary	Shared equally amongst all in the household (all uses electricity and for the common household)
Laundry/dry cleaning	R -	R -	R -	R -	Section 15(3) discretionary	Included in the duties of the domestic worker
Telephone	R 550,00	R 50,00	R 100,00	R 700,00	Section 15(3) discretionary	Real values: children on prepaid airtime
Domestic Worker	R 1 000,00	R 500,00	R 500,00	R 2 000,00	Accutt principle	Share allocation 2 shares to adult and 1 share for children
Garden services	R 500,00	R 250,00	R 250,00	R 1 000,00	Accutt principle	Share allocation 2 shares to adult and 1 share for children
Insurance (short term) on house	R 600,00	R 300,00	R 300,00	R 1 200,00	Accutt principle	Share allocation 2 shares to adult and 1 share for children
Other: wifi	R 270,00	R 135,00	R 135,00	R 540,00	Accutt principle	Share allocation 2 shares to adult and 1 share for children

How to submit your completed maintenance application for to the Maintenance Court



Submission of an additional spreadsheet in support your maintenance application form (expenses)

MONTHLY EXPENSES, AVERAGE OVER 3 MONTHS FROM DECEMBER 2022 TO F 2 children (6 years and 17 years)

Expense	Complainant	Child 1 (6)	Child 2 (17)	Total	Calculation based on	Reasons:
Lodging (bond /lev/ rent)	R 2 500,00	R 2 500,00	R 2 500,00	R 7 500,00	Section 15(3) discretionary	Shared equally: Children has their own rooms, have use of the bathroom, kitchen and living room (worked out per area)
	R 3 500,00	R 2 000,00	R 2 000,00	R 7 500,00	Section 15(3) discretionary	Shared: children own room, shares proportionate the common areas such as bathroom, kitchen and living room
	R 3 750,00	R 1 875,00	R 1 875,00	R 7 500,00	Accut principle	Share allocation 2 shares to adult and 1 share for children
Groceries / food	R 3 000,00	R 1 500,00	R 1 500,00	R 6 000,00	Accut principle	Share allocation 2 shares to adult and 1 share for children
	R 2 400,00	R 1 200,00	R 2 400,00	R 6 000,00	Section 15(3) discretionary	Shared: mom eats 40%, 17 year old eats 40% and 6 year old eats 20%
	R 2 400,00	R 1 200,00	R 2 400,00	R 6 000,00	Section 15(3) discretionary	Shared amended Accut as if 17 year old is an adult (divided by 3)
Toiletries	R 1 000,00	R 250,00	R 250,00	R 1 500,00	Section 15(3) discretionary	Based on real usage
Household cleaning material	R 1 000,00	R 1 000,00	R 1 000,00	R 3 000,00	Section 15(3) discretionary	Shared equally: Children has their own rooms, have use of the bathroom, kitchen and living room (worked out per area)
	R 1 400,00	R 800,00	R 800,00	R 3 000,00	Section 15(3) discretionary	Shared: children own room, shares proportionate the common areas such as bathroom, kitchen and living room
	R 1 500,00	R 750,00	R 750,00	R 3 000,00	Accut principle	Share allocation 2 shares to adult and 1 share for children
Electricity	R 700,00	R 350,00	R 350,00	R 1 400,00	Accut principle	Share allocation 2 shares to adult and 1 share for children
	R 466,67	R 466,67	R 466,67	R 1 400,00	Section 15(3) discretionary	Shared equally amongst all in the household (all uses electricity and for the common household)
Laundry/dry cleaning	R -	R -	R -	R -	Section 15(3) discretionary	Included in the duties of the domestic worker
Telephone	R 550,00	R 50,00	R 100,00	R 700,00	Section 15(3) discretionary	Real values: children on prepaid airtime
Domestic Worker	R 1 000,00	R 500,00	R 500,00	R 2 000,00	Accut principle	Share allocation 2 shares to adult and 1 share for children
Garden services	R 500,00	R 250,00	R 250,00	R 1 000,00	Accut principle	Share allocation 2 shares to adult and 1 share for children
Insurance (short term) on house	R 600,00	R 300,00	R 300,00	R 1 200,00	Accut principle	Share allocation 2 shares to adult and 1 share for children

Add the following columns:

- Additional children (and mark the column with each child's age) – this is so that a fair assessment could be done and the monthly expenses could be split between all children and the complainant
- Add a column: named “calculation based on” – this is where you indicate which “formula” you used to make the necessary split between the children and the complainant
- Add the column: “Reasons” – this is where you give a short description of your reasoning why and how you made the split between each child and the complainant’s expenses

Submission of an additional founding affidavit in support your maintenance application form

An example of the founding affidavit is available under the “Handout and Resource” section of the link that you have provided during registration. The affidavit could also be downloaded by following this link: <https://www.lunchandlearn.org.za/wp-content/uploads/2023/03/Founding-Affidavit-example-section-6-application.doc>

In what order should all documents be submitted?



1. J101 Maintenance application form
2. Copy of your ID, birth certificates of children
3. Copy of your divorce decree (if applicable)
4. Proof of your address and your bank statement
5. Optional: spreadsheet with expenses
6. Optional: founding affidavit
7. Proof of income (salary slip)
8. Proof of expenses

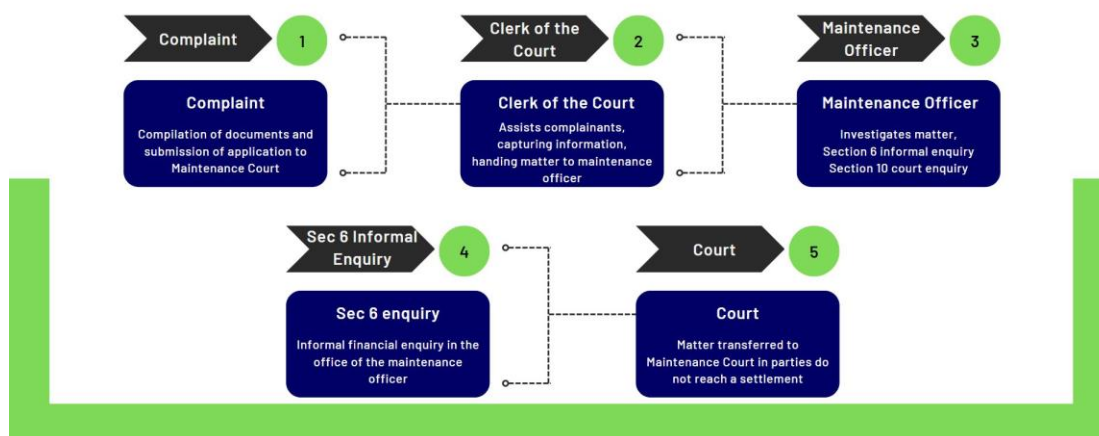
Practical tips and common problems when submitting your maintenance application form to court

Where do I hand it in my forms?	Any Magistrate Court is deemed to be a Maintenance court – you can hand in your documents at the Court closest to where you live, or where you work (or carry on business) or where the child resides
When are the Courts open?	Maintenance Courts are operational during normal court hours – 08:00 to 16:00 every day
To whom do I give my application form?	Do not leave your forms with security at Court – give your forms to the Maintenance Clerk or the Maintenance officer
Do I need to make copies of all documents?	The Court will make copies for the Respondent, but make a set of copies for yourself
How many copies is needed?	Make a set of everything that you file at Court for yourself and ask that they stamp your copy as proof that you have submit it
Follow up procedure on your maintenance matter	If you hand in your application to Court and you do not get a date for appearance in front of the Maintenance Officer, enquiry within 5 days and following up weekly
Details of responsible personnel (MC / MO + dates)	Always write down the name, telephone number and the email address of every Court personnel that you deal with such as the Maintenance Clerk and the Maintenance Officer. This would make it easier to follow up should you have a complaint.

What will happen next if I submit my application form and documents to Maintenance Court?

How to submit your completed maintenance application for to the Maintenance Court

What will happen next if I submit my application form and documents to Maintenance Court?



Disclaimer: Although every measure was taken to ensure that the information contained in this webinar handout is legally correct at the time when it was presented, the information given and presented are ultimately the views of the individual presenters and constitutes an opinion and interpretation of certain portions of the law. It should not be construed as legal advice. The information presented are for educational and informative purposes and if you require legal assistance with your legal matter, you are advised to contact a reputable family law practitioner to assist.