



HOW IS A MAINTENANCE ORDER ENFORCED WHEN THE RESPONDENT IS IN ARREARS?



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Introduction

Webinar Overview

- Overview of remedies and what you could ask for if the respondent is in arrears
- Brief discussion on warrants of execution
- Brief explanation of attachment orders
- Brief discussion on emoluments attachment (“garnishee”) orders
- Discussion of sequestrations
- Short explanation of how criminal proceedings work
- When is a person considered to be in default / arrears?
- Discussion on the process to report arrear maintenance
- Valid defense for arrear maintenance



What to expect

Structure of our Lunch and Learn webinars

Pre-reading
material

Webinar

Resources &
Templates



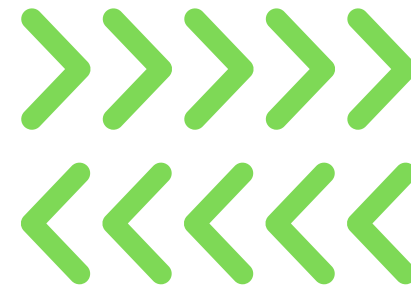
How is a maintenance order enforced when the respondent is in arrears?



Overview of remedies and what you could ask for if the respondent is in arrears

Parties are both **in** South Africa

One party is **outside** South Africa



Reciprocal Enforcement of Maintenance Orders Act of 1963 (Act No. 80 of 1963)

How is a maintenance order enforced when the respondent is in arrears?


Effect of orders of maintenance court



24. Effect of orders of maintenance court

(1) Save as is otherwise provided in this Act, **any order or direction made by a maintenance court under this Act shall have the effect of an order or direction of the said court made in a civil action.**

(2) Any order made under **section 16(1)(a)(ii), 20 or 21(4)** shall have the effect of a civil judgment of the maintenance court concerned and shall be executed as provided in Chapter 5.

- 
- lying-in expenses
 - cost orders of service
 - DNA costs

How is a maintenance order enforced when the respondent is in arrears?

Overview of remedies and what you could ask for if the respondent is in arrears



26. Enforcement of maintenance or other orders

(1) Whenever any person (a) against whom any maintenance order has been made has failed to make any particular payment in accordance with that maintenance order; or (b) against whom any order for the payment of a specified sum of money has been made under section 16(1)(a)(ii), 20 or 21(4) has failed to make such a payment,

such order shall be enforceable in respect of any amount which that person has so failed to pay, **together with any interest thereon-**

- (i) by **execution against property** as contemplated in section 27;
- (ii) by the **attachment of emoluments** as contemplated in section 28; or
- (iii) by the **attachment of any debt** as contemplated in section 30.:

How is a maintenance order enforced when the respondent is in arrears?



Overview of remedies and what you could ask for if the respondent is in arrears

Chapter 5:
Civil execution

Execution
against
property

Attachment
of
emoluments

Attachment
of any debt

Other remedies
available

Sequestration

Contempt
of court
(Criminal)

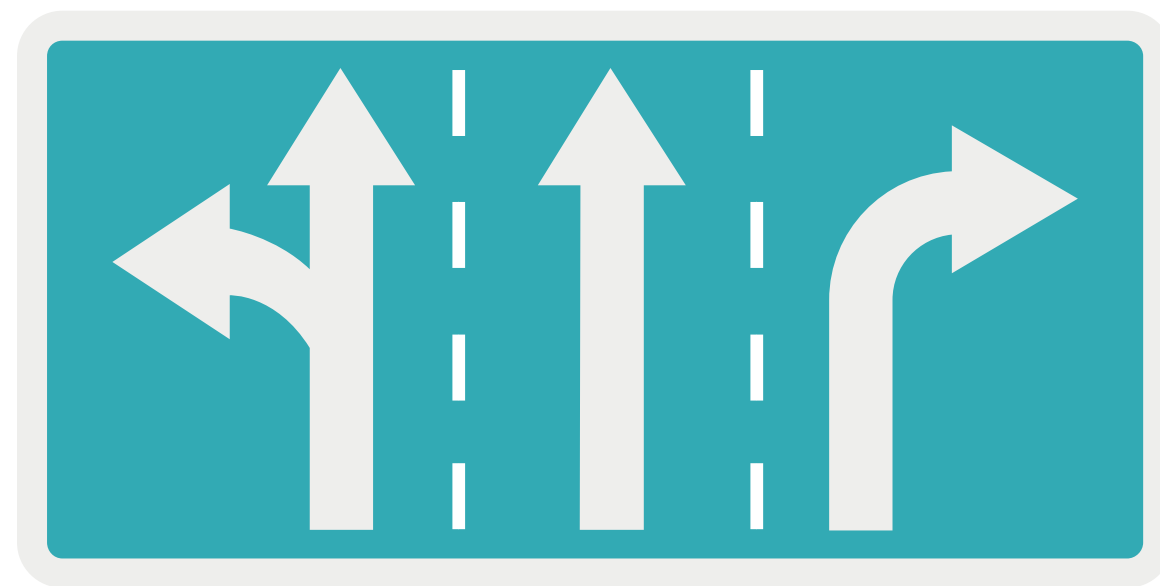
Future
maintenance

(Mediation)

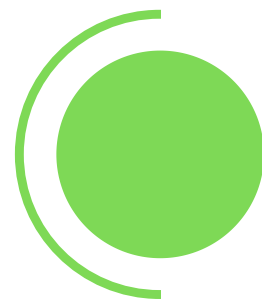
How is a maintenance order enforced when the respondent is in arrears?



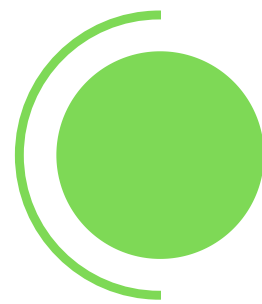
Overview of remedies and what you could ask for if the respondent is in arrears



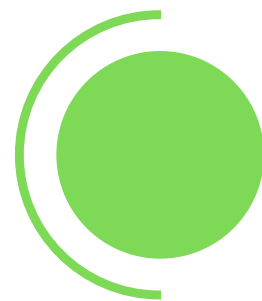
**Choose your
lane**



Execution against property
as contemplated in section 27



Attachment of emoluments
as contemplated in section 28; **or**



Attachment of any debt
as contemplated in section 30

How is a maintenance order enforced when the respondent is in arrears?



Overview of remedies and what you could ask for if the respondent is in arrears

To the Maintenance Officer of the Maintenance Court,

1. I, (full name of person in whose favour order is to be/was made)

ID number

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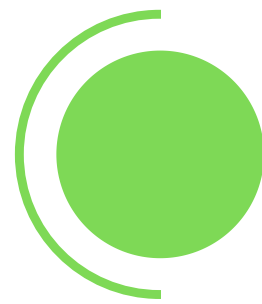
hereby apply -

- *(a) for authorisation to issue a warrant of execution; or
- *(b) for an order for the attachment of emoluments; or
- *(c) for an order for the attachment of a debt.

How is a maintenance order enforced when the respondent is in arrears?



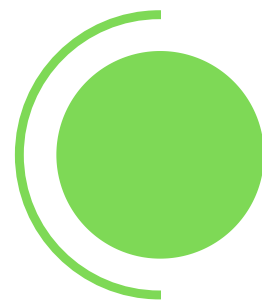
Overview of remedies and what you could ask for if the respondent is in arrears



Sequestration / Future maintenance



Mediation



Contempt of court (Criminal)

How is a maintenance order enforced when the respondent is in arrears?



Execution against property as contemplated in section 27

- Court order that allows the applicant to seize the respondent's movable property (such as a car or furniture) and sell it to pay off the arrears
 - Sheriff of the court judicially attach goods
 - Certain goods cannot be attached
 - Value of goods attached >R3000: newspaper
- Movable property sold in execution of process of the court shall be sold publicly and for cash by the sheriff



• Steps to be followed • Documents needed • How long is a WOE valid • Stay of WOE • When suspended?

How is a maintenance order enforced when the respondent is in arrears?



Attachment of emoluments as contemplated in section 28

- This is a court order that allows for the attachment of the respondent's salary, earnings or wages on a monthly basis to pay off the arrears
- Employer placed in stead of debtor with obligation to deduct
 - May deduct a 5% admin fee of every deduction
- Money paid over directly to complainant on a monthly basis
 - Penalties for non-payment for employer



• Steps to be followed • Documents needed • Evidence by employer • EAO suspended, amended or rescinded • service of documents

How is a maintenance order enforced when the respondent is in arrears?



Attachment of any debt as contemplated in section 30

- An order by court so that any debt owed to the respondent (non-paying party) could be attached by the sheriff so that it could be paid to the complainant
- The debt must be owed by a third party to the defaulting party, or to be owed in the future or accruing. The Court can grant an Order that such debt is attached to pay the arrear maintenance.



- **Steps to be followed** • **Documents needed** • **What types of debt** • **Loan accounts payable in future?**

How is a maintenance order enforced when the respondent is in arrears?



Sequestration

- Sequestration is used when the estate of a person is sequestrated and a liquidator takes control of the estate of a person
- Only done if the estate of a person who is no longer able to pay his or her debts due to uncontrollable circumstances is surrendered by order of the court
 - Not often used as it is an expensive procedure
- Risks of contribution if there is not enough money realized from the estate

How is a maintenance order enforced when the respondent is in arrears?



Future maintenance

- Any pension, annuity, gratuity, compassionate allowance or similar benefit can be attached, notwithstanding anything to the contrary contained in any law (***Section 26 (4) and Soller v Magistrate Wynberg 2006 (2) SA 66 (C)*** – provided that such pension or benefit is due and payable)
- In terms of Soller case a maintenance court may make orders for the payment of maintenance even where the claim exceeds the monetary jurisdiction of the magistrates court

How is a maintenance order enforced when the respondent is in arrears?



Mediation

- In a mediation procedure, a neutral intermediary, the mediator, helps the parties to reach a mutually satisfactory settlement of their dispute
- Parties engages in a round-table discussion resolving how the arrears will be dealt with
 - Could be made a court order using the J214 consent order
 - Not regulated by the Maintenance Act
- SALRC Paper 157 includes ADR as an alternative to litigation / court process

How is a maintenance order enforced when the respondent is in arrears?



Contempt of court (Criminal)

31. Offences relating to maintenance orders

(1) Subject to the provisions of subsection (2), any person who fails to make any particular payment in accordance with a maintenance order shall be **guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years or to such imprisonment without the option of a fine.**



• Steps to be followed • Documents needed • Where to report • Involvement of SAPS •
Section 305 of the Childrens Act

How is a maintenance order enforced when the respondent is in arrears?



When is a person considered to be in default / arrears? Section 26(2)(a)

If any maintenance order or any order made under section 16(1)(a)(ii), 20 or 21(4) has **remained unsatisfied for a period of ten days from the day on which the relevant amount became payable or any such order was made**, as the case may be, the person in whose favour any such order was made may apply to the maintenance court where that person is resident-

- (i) for the authorisation of the issue of a warrant of execution referred to in section 27(1);
- (ii) for an order for the attachment of emoluments referred to in section 28(1); or
- (iii) for an order for the attachment of any debt referred to in section 30(1)

How is a maintenance order enforced when the respondent is in arrears?



Discussion on the process to report arrear maintenance

[Form K \[J306\]](#) - Application for Enforcement of Maintenance or other Order in terms of Section 26 of the Maintenance Act
(civil remedies for recovery)


[Form Q \[J470\]](#) - Complaint of Failure to Comply with a Maintenance Order for purposes of Section 31(1) of the Maintenance Act
(criminal charges)

How is a maintenance order enforced when the respondent is in arrears?



J306

J306E


REPUBLIC OF SOUTH AFRICA
APPLICATION FOR ENFORCEMENT OF MAINTENANCE OR OTHER ORDER
IN TERMS OF SECTION 26 OF THE MAINTENANCE ACT, 1998 (ACT No. 99 OF 1998)

Reference No. _____

* Delete whichever is not applicable

In the maintenance matter between:

_____ (person in whose favour maintenance order was made)
and
_____ (person against whom maintenance order was made)

To the Maintenance Officer of the Maintenance Court, _____

1. I, _____ (full name of person in whose favour order is to be/was made)
ID number hereby apply -

*(a) for authorisation to issue a warrant of execution; or
*(b) for an order for the attachment of emoluments; or
*(c) for an order for the attachment of a debt.

2. The following information is important for purposes of my application:

(Submit information relating to property and/or debts of the person against whom the order was made or his or her employer and income)

3. The whereabouts of the person against whom the order was made are as follows:

4. In support of my application I hereby *declare under oath/truly affirm that -

(a) on (date) _____ the attached order in terms of the Maintenance Act, 1998, was made by the above-mentioned maintenance court;

(b) the attached order has remained unsatisfied; and

Form K **[J306]** - Application for Enforcement of Maintenance or other Order in terms of Section 26 of the Maintenance Act (civil remedies for recovery)

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How is a maintenance order enforced when the respondent is in arrears?



Valid defence for arrear maintenance



Sec 31(2): If the defence is raised in any prosecution for an offence under this section that any failure to pay maintenance in accordance with a maintenance order was **due to lack of means** on the part of the person charged, he or she **shall not merely on the grounds of such defence be entitled to an acquittal** if it is proved that the failure was due to his or her **unwillingness to work or misconduct**

How is a maintenance order enforced when the respondent is in arrears?



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