



Unmarried Fathers

There is a misconception that unmarried fathers do not have the same rights to their child as the child's mother. In many instances the biological father does not have an interest in their child, however many fathers do have an interest in their child and for this reason the Children's Act 38 of 2005 now affords them the same rights as the mother.

PARENTAL RESPONSIBILITIES AND RIGHTS OF UNMARRIED FATHERS

The biological child of a father who does not have parental responsibilities and rights due to the fact that he is not married to the child's mother or he was not married to the child's mother at the time of the child's conception, the time of the child's birth or anytime between the child's conception and the child's birth ACQUIRES full parental responsibilities and rights in respect of the child:

- If at the time of the child's birth, he is living with the mother in a permanent life-partnership;
- If he, regardless of whether he has lived or is living with the mother:
 - Consents to be identified or successfully applies in terms of section 26 to be identified as the child's father or pays damages in terms of customary law;
 - Contributes or has attempted in good faith to contribute to the child's upbringing for a reasonable period; and
 - Contributes or has attempted in good faith to contribute towards expenses in connection with the maintenance of the child for a reasonable period.

What are an unmarried father's rights?

To care for the child

CARE is a new term defined in the Children's Act and replaces the term **CUSTODY**. To care for the child means that within your means and where appropriate, you should provide your child with a suitable place to live; the living conditions must be conducive to the child's health, well-being and development; and give your child the necessary financial support.

The Children's Act 38 of 2005, which became fully operational on 1 April 2010 outlines parental responsibilities and rights. They include the following:

1. To care for the child;
2. To maintain contact with the child;
3. To act as guardian of the child; and
4. To contribute to the maintenance of the child.

It is important to safe-guard and promote the well-being of your child, protect your child from maltreatment, abuse, neglect, degradation, discrimination, exploitation and any other physical, emotional or moral harm or hazards.

It is also important to safe-guard your children against any infringement of the child's rights as set out in the Bill of Rights and Chapter 2 of the Children's Act.

To care for your child also includes the following:

- To guide, direct and secure your child's education and upbringing, including religious and cultural education and upbringing in a manner appropriate to the child's age, maturity and stage of development;
- To guide, advise and assist your child in decisions to be taken by the child in a manner appropriate to the child's age, maturity and stage of development;
- To guide the behaviour of a child in a humane manner;
- To maintain a sound relationship with the child;
- To accommodate any special needs that the child may have; and
- To generally ensure that the best interests of the child is the paramount concern in all matters affecting the child.

To maintain contact with the child

CONTACT is a new term defined in the Children's Act and replaces the term **ACCESS**. To maintain contact with your child means the following:

- To maintain a personal relationship with the child;
- If the child lives with someone else to communicate with the child on a regular basis including: visiting the child or being visited by the child or if that is not possible communicating by telephone, post or any other form of electronic communication.

To act as guardian of the child

A parent who acts as guardian must administer and safeguard the child's property and property interests; assist or represent the child in administrative, contractual and other legal matters; or give consent or refuse any consent required by law in respect of the child, including the following:

- consent to the child's marriage;
- consent to the child's adoption;
- consent to the child's departure or removal from the Republic;
- consent to the child's application for a passport; and

- consent to the alienation or encumbrance of any immovable property.

To contribute to the maintenance of the child

In terms of the Maintenance Act, a parent has a duty to support their child. The duty extends to such support as a child reasonably requires for his or her proper living and up- bringing and includes: food, clothing, accommodation, medical care and education.

The following will be taken into consideration in determining the amount to be paid as maintenance in respect of a child:

- That the duty of supporting a child is an obligation which the parents have incurred jointly; and
- That the parents' respective shares of such obligation are apportioned between them according to their respective means.

In conclusion, if you are an unmarried father who has complied with requirements of the Children's Act, you therefore have acquired full parental responsibilities and rights in respect of your child. These parental responsibilities and rights must be in the best interests of the child. It is further advisable that a parenting plan is drawn up in order to outline the responsibilities and rights of each parent to ensure that these responsibilities and rights can be exercised in a safe and practical manner.