

## DIVORCE: MAINTAINING MAINTENANCE

*Years in practice has shown that in many instances, a divorced client's difficulties do not cease after the divorce order has been granted. For a while, the waters may be calm, but clients who are still connected to their former spouse, whether when paying maintenance or during contact visits with minors, often experience the need to again obtain legal advice. This arises most often as a result of a former spouse not paying maintenance or failing to adhere to the agreed periodical maintenance increases.*

### **Common misconceptions and the Law**

One of the most frequent misconceptions is that, after divorce, both parties will be required to pay the same amount in respect of maintenance of any minor children.

This 50/50 approach is simply not correct, nor sustainable, for obvious reasons. A divorcing or divorced person must know that in terms of our South African maintenance laws, spouses are required to pay maintenance in accordance with their means. 'Means', in this context, includes a spouse's assets and income.

### **In practice**

It is advisable that a divorce order includes a clause providing for the automatic increase – with reference to the consumer price index – of the amount of maintenance agreed upon. However, this may nonetheless prove inadequate as this formula cannot adequately address the continuously increasing needs of growing children and the spiraling cost of living.

Both the party who is entitled to receive payment of maintenance (albeit on behalf of minors) and the party saddled with the obligation to pay maintenance, are always entitled to approach the Court to change the existing court order when circumstances warrant a change.

For assistance contact us at [info@stbb.co.za](mailto:info@stbb.co.za).

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