

No. 3 of 1999.

*Domestic Violence (Summary
Proceedings) Act 1999.*

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ANTIGUA
AND
BARBUDA



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

18th February, 1999.

ANTIGUA AND BARBUDA

No. 3 of 1999

AN ACT to provide protection by means of summary proceedings in cases involving domestic violence and for related matters.

[*25th February, 1999*]

ENACTED by the Parliament of Antigua and Barbuda as follows:

PRELIMINARY

1. This Act may be cited as the Domestic Violence (Summary Proceedings) Act, 1999. Short title.

2. In this Act, unless the context otherwise requires Interpretation.

"applicant" means any person who applies or on whose behalf application is made, pursuant to this Act, for an order;

"child" means a person under the age of 18 years who

- (a) is born to both parties to a marriage;
- (b) has been adopted by one or both parties to a marriage;
- (c) whether or not born to either party to a marriage is or has been living in the household residence as a member of the family;
- (d) is born to man and woman who, although not married to each other are living or have lived together in the same household;
- (e) whether or not born to the man and woman referred to in paragraph (d) or either of them
 - (i) is or has been a member of their household; or
 - (ii) who resides in that household on a regular basis; or
 - (iii) is a person of whom either the man or the woman is guardian;

"cooling off period" means a period not exceeding two days;

"court" means a court of summary jurisdiction;

"common law spouse" means a single person who is living together with another single person of the opposite sex in the same household as husband and wife without being legally married to each other;

"dependant" means a person over the age of 18 years who normally resides or resides on a regular basis with another person and that other person is responsible for the maintenance of the first mentioned person;

"domestic violence" means any act of violence whether physical or verbal abuse perpetrated by a member of a household upon a **member** of the same household which causes or is likely to cause physical, mental or emotional injury or harm to the abused party or any other member of the household;

"*ex parte* application" means an application made without notice to the respondent;

"household residence" means in relation to both spouses, the dwelling house, apartment or other living quarters that is or was last habitually used by both parties or either of them as the only or principal family residence together with any land, buildings or improvements appurtenant to it used wholly or mainly for the purposes of the household;

"Minister" means Minister responsible for the administration of this Act:

"occupation order" means an order or interim order made under section 7;

"parent" includes

- (a) the parent of a child of the household
- (b) the parent or grandparent of a spouse;
- (c) the parent or grandparent of a respondent, either by consanguinity or affinity;

"protection order" means an order or interim order made under section 4:

"respondent" means a person against whom an order is granted pursuant to this Act;

"specified person" means the spouse of the respondent, a parent, a child or dependant;

"spouse" includes a former spouse, common law spouse and former common law spouse;

"tenancy order" means an order made under section 11 or an interim order made under section 12; and

"tenant", in relation to any dwelling house, includes any person

(a) whose tenancy has expired or has been determined; and

(b) who is for the time being deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwelling house, and the term "tenancy" has a corresponding meaning.

Persons entitled to apply under this Act.

3. (1) An application for an order other than a tenancy order under this Act may be made by

(a) the spouse of the respondent who is the person on whom the alleged conduct has been, or is likely to be perpetrated by the respondent;

(b) any member of the household on his own behalf or on behalf of any other member of the household; or

(c) the parent of the specified person or of the respondent though not residing in the household, on behalf of the specified person.

(2) Where the alleged conduct involves a child or dependant, the application under subsection (1) may be made by

(a) a person with whom the child or dependant normally resides or resides on a regular basis or any other member of the household; or

(b) a parent or guardian of the child or dependant; or

- (c) a person holding the office or performing the duties of a probation officer or medical social worker.

(3) Where the dependant is mentally disabled, the application under subsection (1) may be made by

- (a) a person experienced or qualified in social welfare;
- (b) a police officer; or
- (c) a person holding the office or performing the duties of a probation officer or medical social worker.

(4) An application for a tenancy order may be made by the respondent's spouse as mentioned in subsection (1) (a) or by a parent or guardian of a child or dependant.

PROTECTION ORDERS

4. (1) Application may be made to the court in accordance with Form 1 of the Schedule for a protection order prohibiting the respondent

Application for
protection order.
p
Form 1.
Schedule.

- (a) from entering or remaining in the household residence of any specified person;
- (b) from entering or remaining in a specified area where the household residence of a specified person is located;
- (c) from entering the place of work or education of any specified person;
- (d) from entering or remaining in any place where a specified person happens to be; or
- (e) from molesting a specified person by
 - (i) watching or besetting the specified person's household residence, place of work or education;

- (ii) following or waylaying the specified person in any place;
- (iii) making persistent telephone calls to or sending in writing any form of correspondence, whether in handwriting or by mechanical or electronic means, to a specified person; or
- (iv) using abusive language to or behaving towards a specified person in any other manner which is of such nature and degree as to cause annoyance to, or result in ill-treatment of the specified person.

(2) On hearing an application under subsection (1) the court may make a protection order if it is satisfied that

- (a) the respondent has used or threatened to use, violence against, or caused physical or mental injury to a specified person and is likely to do so again; or
- (b) having regard to all the circumstances, the order is necessary for the protection of a specified person,

and the court may, if it thinks fit, attach a power of arrest to the order.

(3) A protection order may be made on an *ex parte* application if the court is satisfied that the delay that would be caused by proceeding on notice would or might entail

- (a) risk to the personal safety of a specified person, or
- (b) serious injury or undue hardship.

(4) Any protection order made on an *ex parte* application shall be an interim order.

(5) Where a protection order is granted on an *ex parte* application, the respondent may apply immediately for it to be discharged.

5. (1) Where a protection order or an interim protection order is made and **Breach of protection order.**

- (a) it is served personally on the respondent, and
- (b) the respondent contravenes the order in any respect, the respondent commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

(2) Subject to the provisions of this section, where a protection order is in force, a police officer may arrest without warrant a person who has committed or whom he has reasonable cause to suspect has committed, a breach of the order.

(3) No person shall be arrested under this section unless the police officer believes that the arrest of that person is reasonably necessary for the protection of the applicant.

(4) For the purposes of subsection (2), the police officer shall take into account

- (a) the seriousness of the act which constituted the alleged breach;
- (b) the time that has elapsed since the alleged breach was committed and whether there is any further need for a cooling off period; and
- (c) the restraining effect of other persons or circumstances on the respondent.

(5) For the purposes of subsection 4 (b) a cooling off period in custody shall not exceed twenty-four hours.

(6) Notwithstanding this section a police officer may in the absence of a protection order take such steps as may be necessary and appropriate including the exercise of the power of arrest for the protection of any member of a household where he knows or

has good cause to believe that a person is the subject of domestic violence and is likely to be further abused.

(7) Where an arrest is made under this section

- (a) the person arrested shall be entitled to make a telephone call to one person of his choice, other than the applicant or a specified person;
- (b) it shall be the duty of the police officer who makes the arrest to ensure that the person arrested is informed, as soon as practicable after the arrest, of the right conferred by paragraph (a).

**Duration and
discharge of
protection order.**

6. (1) A protection order shall cease to have effect if a party to the proceedings in which the order was made applies to the court for it to be discharged.

(2) A copy of an application under subsection (1) shall be served personally on each person who was a party to the proceedings in which the original order was made.

(3) In determining whether to discharge a protection order the court shall have regard to the matters referred to in section 4 (2).

OCCUPATION ORDER

**Application for a
grant of
occupation order.
Form 2.
Schedule.**

7. (1) Application may be made to the court in accordance with Form 2 of the Schedule for an occupation order granting a specified person named in the order the right to live in the household residence.

(2) Subject to section 14 and subsection (3) of this section, the court may, on an application under subsection (1), make an occupation order granting to the applicant, for such periods and on such terms and conditions as the court thinks fit, the right to occupy the household residence.

(3) The court may make an occupation order under subsection (2) only if the court is satisfied that such an order

- (a) is necessary for the protection of a specified person,
or
- (b) is in the best interest of a child.

8. (1) An occupation order may be made on an *ex parte* application if the court is satisfied that

Ex parte
application for
occupation order.

- (a) the respondent has used violence against or caused physical or mental injury to a specified person; and
- (b) the delay that would be caused by proceeding on notice could or might expose the specified person to physical injury.

(2) An occupation order made on an *ex parte* applications shall be an interim order.

(3) Where the court grants an occupation order on an *ex parte* application, the court shall at the same time make an interim protection order unless it considers that there are special reasons why the order should not be made.

(4) An occupation order which is made on an *ex parte* application while the specified person concerned and the respondent are living together in the same household residence shall expire

- (a) on the discharge of the occupation order by the court;
- (b) on the discharge of an interim protection order made pursuant to subsection (3); or
- (c) in any other case, at the expiration of a period of seven days after the date on which the occupation order was made.

(5) Where an occupation order is made on an *ex parte* application, the respondent may apply for variation or discharge of that order.

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Effect of
occupation order.

9. (1) Where an occupation order is made the specified person to whose benefit it is made is entitled, to the exclusion of the respondent, personally to occupy the household residence to which that order relates.

(2) The conditions attached to an occupation order may include such arrangements as may be necessary for the financial support of the member of the household where appropriate.

Variation or
discharge of
occupation order.

10. The court may, if it thinks fit, on the application of either party, make an order

- (a) extending or reducing any period specified by the court pursuant to subsection (2) of section 7; or
- (b) varying or discharging any terms and conditions imposed by the court pursuant to that subsection.

TENANCY ORDERS

Tenancy order.
Form 3.
Schedule.

11. (1) An application may be made to the court in accordance with Form 3 of the Schedule for a tenancy order, vesting in the applicant, the tenancy of any dwelling house which, at the time of the making of the order

- (a) the respondent is either the sole tenant or a tenant holding jointly or in common with the applicant; and
- (b) is the household residence of the applicant or the respondent.

(2) Subject to section 16, the court may make an order on an application under subsection (1) if the court is satisfied that such an order

- (a) is necessary for the protection of the applicant; or
- (b) is in the best interests of a child or a dependant.

12. (1) A tenancy order may be made on an *ex parte* application if the court is satisfied that

Grant of tenancy order on an *ex parte* application.

- (a) the respondent has used violence against or caused physical or mental injury, to the applicant, child or dependant;
- (b) the delay that would be caused by proceeding on notice would or might expose the applicant, child or dependant, to physical injury.

(2) A tenancy order made on an *ex parte* application shall be an interim order.

(3) Where the court makes a tenancy order on an *ex parte* application the court shall, at the same time, make an interim protection order unless the court considers that there are special reasons why the order should not be made.

(4) A tenancy order which is made on an *ex parte* application while the applicant and the respondent are living together in the same household shall expire

- {a} on the discharge of the order by the court;
- (b) on the discharge of an interim protection order made under subsection (3); or
- (c) in any other case, at the expiration of a period of seven days after the date on which the order was made.

(5) Where a tenancy order is made on an *ex parte* application the respondent may apply for a variation or discharge of that order.

13. (1) Where a tenancy order is made the applicant shall, unless the tenancy is sooner determined, become the tenant of the dwelling house subject to the terms and conditions of the tenancy

Effect of tenancy order.

in force at the time of the making of that order, and the respondent shall cease to be the tenant.

(2) Every tenancy order shall have effect and may be enforced as if it were an order of the court for possession of the land granted in favour of the applicant.

(3) Nothing in this Act or in any tenancy order

- (a) limits or affects the operation of any enactment or rule of law for the time being applicable to any tenancy to which a tenancy order applies, or to the dwelling house held under the tenancy; or
- (b) authorises the court to vary, except by vesting the tenancy pursuant to this section or revesting the tenancy pursuant to section 14, any express or implied term or condition of the tenancy.

Power to discharge
tenancy order and
revest tenancy.

14. (1) The court may, if it thinks fit on the application of

- (a) the applicant or respondent, or
- (b) the personal representative of either party, make an order (in this section referred to as a "revesting order") reverting the tenancy accordingly.

(2) Where a revesting order is made under subsection (1), the person in whose favour it is made shall, unless the tenancy is sooner lawfully determined, become the tenant of the dwelling house subject to the terms and conditions of the tenancy in force immediately before the date on which the revesting order was made.

PROVISIONS RELATING TO OCCUPATION ORDERS AND TENANCY ORDERS

Procedure relating
to occupation
orders and tenancy
orders.

15. (1) Before making an occupation order (other than an interim occupation order) or a tenancy order (other than an interim tenancy order), the court shall direct that notice be given

to any person having an interest in the property which would be affected by the order.

(2) The person referred to in subsection (1) shall, upon being notified pursuant to that subsection, be entitled to appear and to be heard in the matter of the application for the occupation order or tenancy order as a party to that application.

(3) Where an application is made for an occupation order, the court may treat that application as an application for a tenancy order or an occupation order or both and may make a tenancy order (whether or not it makes an occupation order) if it is satisfied that

- (a) it has jurisdiction to make the tenancy order and that the making of such an order is appropriate; and
- (b) subsection (1) has been complied with in respect of the making of a tenancy order.

(4) Where an application is made for a tenancy order, the court may treat that application as an application for an occupation order or a tenancy order or both and may make an occupation order (whether or not it makes a tenancy order) if it is satisfied that

- (a) it has jurisdiction to make an occupation order and that the making of such an order is appropriate; and
- (b) subsection (1) has been complied with in respect of the making of an occupation order.

16. (1) On or after making an occupation order or a tenancy order, the court may, subject to subsection (2), make an order granting to the applicant the use, for such period and on such terms and conditions as the court thinks fit, of all or any of

- (a) the furniture;
- (b) the household appliances; and
- (c) the household effects,

**Power of Court to
make ancillary
order re: furniture.**

in the household residence or other premises to which the occupation order relates or in the dwelling house to which the tenancy order relates.

(2) Notwithstanding subsection (1), an order made under that subsection shall continue in force for a period of three months beginning on the date on which the order is made, unless the court otherwise directs, but, in any event, shall expire if the occupation order made in relation to the household residence or other premises or the tenancy order made in relation to the dwelling house expires or is discharged.

Interim orders.

17. (1) Every interim order made under this Act on an *ex parte* application shall specify a date (which shall be as soon as reasonably practicable after the order is made) for a hearing on whether an order should be made in substitution for the interim order.

(2) The copy of an interim order which is served on the respondent shall notify the respondent that unless the respondent attends on the specified date to show cause why an order should not be made in substitution for the interim order, the court may discharge the interim order and make an order in substitution for it.

(3) At the hearing referred to in subsection (1) the court may

(a) discharge the interim order;

(b) discharge the interim order and make an order in substitution for it; or

(c) on good cause being shown, adjourn the hearing to a date and place the court may specify.

(4) Where a hearing is adjourned under subsection (3)(c) the court shall, at the adjourned hearing, exercise either the power conferred by paragraph (a) or (b) of that subsection.

(5) In this section,

"interim order" means an interim protection order, an interim occupation order or an interim tenancy order, as the case may be;

"order" means a protection order, an occupation order or a tenancy order, as the case may be, not being or an interim order.

GENERAL

18. (1) No person shall be present during the hearing of any proceedings under this Act except

Conduct of proceedings.

- (a) officers of the court;
- (b) parties to the proceedings and their counsel;
- (c) witnesses; or
- (d) any other person permitted by the Magistrate (or presiding officer of the court however designated) to be present.

(2) Any witness shall leave the courtroom if asked to do so by the Magistrate (or presiding officer of the court however designated).

(3) Nothing in this section shall limit any other power of the court to hear proceedings *in camera* or to exclude any person from the court.

19. In any proceedings under this Act (other than criminal proceedings) including proceedings by way of appeal, the court may receive such evidence as it thinks fit whether it is otherwise admissible in a court of law or not.

Evidence.

20. Every question of fact arising in any proceedings under this Act (other than criminal proceedings) shall be decided on a balance of probabilities.

Standard of proof.

**Restriction of
publication of
reports of
proceedings.**

21. (1) Subject to subsection (4), no person shall publish any report of proceedings under this Act (other than criminal proceedings) except with the leave of the court which heard the proceedings.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(3) Nothing in this section limits

- (a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or
- (b) the power of the court to punish any contempt of court.

(4) This section does not apply to the publication of any report in any publication that

- (a) is of a *bona fide* professional or technical nature; or
- (b) is intended for circulation among members of the legal or medical professions, officers of the Public Service, police officers, psychologists, marriage counsellors or social welfare workers.

Orders by consent.

22. In any proceedings under this Act, a court may make any order with the consent of all the parties to the proceedings.

Counselling.

23. The court may, on making an order under this Act, recommend either or both parties to participate in counselling of such nature as the Court may specify.

Appeals.

24. (1) A person aggrieved by

- (a) an order of the court; or

(b) the refusal of the court to make an order,

may, within twenty-eight days after the decision of the court, appeal to the Court of Appeal.

(2) Except where the court which makes an order under this Act otherwise directs, the operation of such order shall not be suspended by virtue of an appeal under this section, and every order may be enforced in the same manner and in all respects as if no appeal under this section were pending.

25. (1) The rights conferred on any person in respect of any property by an order made under this Act shall be subject to the rights of any other person entitled to the benefit of any mortgage, security, charge or encumbrance affecting the property if such mortgage, security, charge or encumbrance was registered before the order was registered or if the rights of that other person entitled to that benefit arise under an instrument executed before the date of the making of the order.

Protection of
mortgagee.

(2) Notwithstanding anything in any enactment or in any instrument, no money payable under any mortgage, security, charge or encumbrance shall be called up or become due by reason of the making of an order under this Act.

26. The Attorney General may make rules of court for the purpose of regulating the practice and procedure of the court in proceedings under this Act, providing for such matters as are necessary for giving full effect to the provisions of this Act and for its due administration.

Rules of Court.

27. This Act shall be in addition to and not in derogation of any jurisdiction of the High Court in respect of matters referred to in this Act.

Jurisdiction.

28. Nothing in this Act shall be construed as altering the right of a spouse to ownership of property.

Property rights

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**SCHEDULE
FORMS**

FORM 1

Domestic Violence (Summary Proceedings) Act, 1999

(Section 4)

**APPLICATION FOR PROTECTION ORDER/INTERIM
PROTECTION ORDER**

I.....
(Name of applicant)

of.....
(Address)

.....
hereby apply under section 4 of the Domestic Violence (Summary Proceedings) Act,
1998 for a protection order/interim protection order to be made by the Magistrate
against

.....
(Name of respondent)

who is.....
(Specify relationship to the named respondent)

and who resides at.....
(Specify address of respondent)

in respect of the following conduct: (Specify details of alleged conduct).

.....
Signature of applicant.

Dated..... 19.....

FORM 2

Domestic Violence (Summary Proceedings) Act, 1999

(Section 7 or 8)

APPLICATION FOR PROTECTION **ORDER/INTERIM**
PROTECTION ORDER

I.....
(Name of applicant)

of.....
(Address)

.....
hereby apply under section 7 or 8 of the Domestic Violence (Summary Proceedings) Act, 1998 for a protection order/interim protection order to be made by the Magistrate against

.....
(Name of respondent)

who is.....
(Specify relationship to the named respondent)

and who resides at.....
(Specify address of respondent)

in respect of the following conduct: (Specify details of alleged conduct)

.....
Signature of applicant.

Dated.....19.....

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FORM 3

Domestic Violence (Summary Proceedings) Act, 1999

(Section 11 or 12)

**APPLICATION FOR PROTECTION ORDER/INTERIM
PROTECTION ORDER**

I.....
(Name of applicant)

of.....
(Address)

.....
hereby apply under section 11 or 12 of the Domestic Violence (Summary Proceedings) Act, 1998 for a protection order/interim protection order to be made by the Magistrate against

.....
(Name of respondent)

who is.....
(Specify relationship to the named respondent)

and who resides at.....
(Specify address of respondent)

in respect of the following conduct: (Specify details of alleged conduct)

.....
Signature of applicant.

Dated.....19.....

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Passed the House of Representatives
this 8th day of February, 1999.

Passed the Senate this 11th
day February, 1999.

B. Harris,
Speaker.

M. Percival,
President.

S. Walker,
Clerk to the House of Representatives.

S. Walker,
Clerk to the Senate.

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