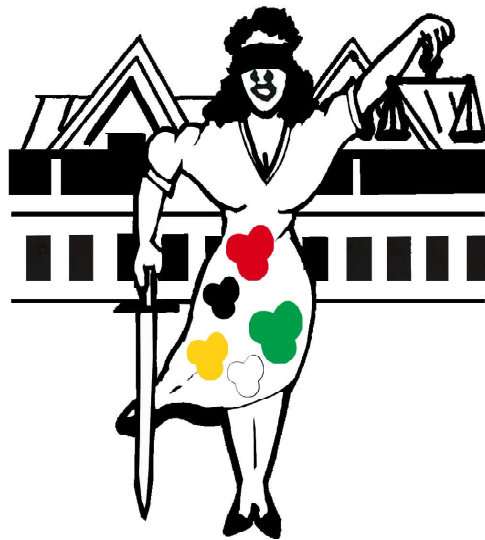


# **What You Need To Know about The Law and You**

# **V**



**The Guyana Association of Women Lawyers - 2023**

# What You Need To Know about The Law and You

# V

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**The Guyana Association of  
Women Lawyers**

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What You Need To Know  
about

## The Law and You V

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*Guyana Association of Women Lawyers*

## Foreword

The Guyana Association of Women Lawyers Inc. (GAWL) in July 1992 launched a public legal education project - **The Law and You Leaflet Project**. The aim is to help the public, particularly women, access justice by educating them about the law.

GAWL created leaflets containing simple explanations of 31 legal topics that affect citizen's lives daily, and published and distributed 500,000 of those leaflets across Guyana for public use. The response from members of the public was overwhelming.

GAWL then expanded the project and compiled the leaflets into three booklets published and distributed free for public use as **The Law and You I**, **The Law and You II** and **The Law and You III**. **The Law and You IV**, covering additional areas of law was published in 2011.

There have been changes to the law since our last publication in 2011. This volume **The Law and You V** consolidates and updates the previous volumes I, II, III, and IV, and adds new topics.

The GAWL acknowledges the work and contributions of its past members and current members on The Law and You booklets. We thank the Guyana Legal Aid Clinic for sponsoring this publication.

We intend that this booklet will serve you as a simple accessible reference for legal information making it easier for you to access justice. This booklet gives you a summary of what the law is. It gives general information only and does not take the place of legal advice specific to your circumstances.

This booklet is free of cost and available in hard copy, and softcopy at <https://www.legalaid.org.gy/> and The Guyana Association of Women Lawyers Facebook page.

**Kean Trotman, President**  
**Guyana Association of Women Lawyers**  
**2023.**

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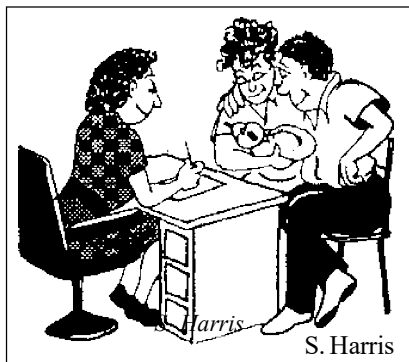
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## Registration of Births

The law relating to the Registration of Births is set out in the **Registration of Births and Deaths Act, Cap 44:01** of the Laws of Guyana (hereinafter referred to as “RBDA”).



### When should the birth of a child be Registered?

The birth of every child in Guyana must be registered within 21 (twenty-one) days after the birth (section 23), or 9 (nine) months if the birth occurred in a remote area.

### Who must register the birth?

The parent or parents are required to provide the particulars (names, date of birth etc.) to the Registrar of Births at the nearest registration center in the district the child was born. (section 23).

The Registrar must complete the registration form and the parents should sign the form.

If the parent/s are not able to register the birth of the child/children, a nurse or any other person present at the birth of the child/children must register the birth.

Where a child is born in an area far away from a registration center, the person registering the birth of the child can send the particulars of birth in writing to the Registrar at the nearest registration center.

### What are the particulars needed for registration of birth?

You must provide the Registrar with the name/s, place of birth, date of birth, sex, race, weight, and length of the child, and the name/s of the mother and father, their occupation, age, and education.

**Who chooses the name?**

Give the child a first name and a surname at the time the birth is registered, because a Court Order will be required to insert a name at a later date. The Registrar will ask what surname the child is to be registered with. This does not need to be the surname used by either the mother or the father.

**Late Registration of Birth**

If the birth of the child/children is not registered within 21 (twenty-one) days after the birth of the child, or 9 (nine) months if the birth occurred in a remote area, as required by the law, sections 32 and 33 of the RBDA provide that the birth may still be registered but only by a Superintendent Registrar or the Registrar General. A Superintendent Registrar may register the birth of child on information provided within 12 (twelve) months of the birth (section 32). The Registrar General may register a birth of child on information provided later than 12 (twelve) months of the birth (section 33)

**What happens when a child is born to unmarried parents?**

Article 8 of the United Nations Convention on the Rights of the Child provides that every child has the right to an identity. This relates to all children whether born to parents who are married or to unmarried parents.

Section 31 of the RBDA provides that where the parents of a child are not married, the father's name and information do not have to be entered on the register, but may be if both parents agree. Where the parents are unmarried the child's surname may be chosen by the parent registering the birth.

The name of the child's father cannot be added after registration except by Court Order or application to Registrar General.

When the name of the father is stated on the registration form it can be used as evidence of paternity for the purpose of maintenance proceedings, inheritance of property, and may be evidence of adultery if the mother or father is married to someone else at the time.

### **Re-registration upon marriage of parents of a child born to unmarried parents**

If the mother and father marry each other after the birth of their child, they can apply to the Registrar General within 3 (three) months of the marriage to have the birth re-registered.

### **Correcting errors on the registration form**

According to Section 43(2) Registration of Births and Deaths (Amendment) Act 2021 a Registrar may only correct minor clerical errors made on a registration form. Any other changes to the registration may only be done if ordered by a Court.

### **Birth certificates**

A birth certificate contains the names, sex, date and place of birth of the child, the mother's full name at the time of birth, her maiden name, and the father's name, if given, and the date of registration.

A birth certificate is not issued at the time of registration. You may apply for a birth certificate 30 (thirty) days after registering the birth. The application may be made at a post office.

## Status of Children

All children have equal status and rights, whether born to married or unmarried parents (in or out of wedlock), and those rights are in relation to their birth parents or to their adoptive parents.

The Status of Children applications are set out in:

- The Status of Children Act, Cap 46:05 of the Laws of Guyana
- The Family (Proceedings and Procedure) Rules 1 of 2016

The Status of Children Act provides for applications for declarations of parentage to be made to a Judge of the High Court. The Act modernizes the procedures for determining who a child's parents are by allowing the Court to order parentage testing procedures, and to accept DNA evidence. It provides for presumptions of paternity and parentage on the basis of marriage, cohabitation, acknowledgment, a finding of a competent court, and the use of fertilization procedures. Paternity and parentage can also be established through declarations of fatherhood and motherhood.

### **The Status of Children Act applies to a child:**

- (a) whether born before or after the commencement of the Act;
- (b) whether born in Guyana or not; and
- (c) whether or not either of the child's parents has ever been living in Guyana. (section 3)

The words 'children' and 'issue' when used in a will of a deceased person mean all children whether born to married or unmarried parents.

**Presumptions of parentage (sections 10 to 15)**

The Act sets out when presumptions of paternity and parentage are to be made. A person is presumed to be the father, or persons are presumed to be the parents, of a child where:

- i) the person is married to the child's parent;
- ii) the person has formally acknowledged paternity;
- iii) the person has been cohabitating with the mother of the child in a relationship of some permanence prior to the birth of the child;
- iv) the person's name is entered as parent in the register of births in Guyana or overseas;
- v) a court, whether in Guyana or overseas, has decided that a person is a child's parent.
- vi) In cases of fertilization, the person cohabits with the child's mother who becomes pregnant by a fertilization procedure, and the person consented to the fertilization procedure. Persons who provide sperm, ovum, or an embryo under fertilization or surrogacy procedures are presumed not to be the mother or father of the child born as a result of the pregnancy.

Most parentage or paternity presumptions may be rebutted by proof on a balance of probabilities (section 16). Where more than one presumption arises, the one which prevails is the one the Court finds most likely to be true (section 17).

**Acknowledging Paternity (section 19)**

A man may acknowledge that a child is his by:

- declaring in writing that he is the father; and
- signing the declaration before a Magistrate, Notary, Justice of Peace (JP) or Commissioner for Oaths to Affidavits; and
- having the mother also sign the declaration acknowledging him as the father; and
- filing the declaration in the office of the Registrar of Births and Deaths.

**Applying for a Declaration of Fatherhood or Motherhood**

Where a person wants to be declared the mother or father of a child, he or she may apply to the Court, through an Attorney-at-Law, to be declared the parent of that child (sections 21, 22). The application,

and a declaration of parentage (motherhood or fatherhood) may be made whether or not the parent is dead (where the application is made on behalf of that parent) or before the child is born (section 23).

Copies of the application made to the court must be served on all parties involved in the matter (section 25).

### **Who may apply for a Declaration of Parentage?** (Section 24)

The persons who may apply for a declaration of parentage are:

- a) a person who claims that the relationship of parent and child exists between him/her and the child;
- b) a person who claims to have an interest that a parent and child relationship exists between the child and another person named or identified;
- c) the Registrar General of Births and Deaths;
- d) a person who may be affected by the results of the declaration of paternity.

### **How and Where to apply for a Declaration of Parentage?**

To apply for a Declaration of Parentage you must:

- a) complete Form 11 'Notice of Application', and Form 9 'Application relating to Children' and an 'Affidavit in Support of Form 11 and Form 9'. You must also produce relevant documents including the child's birth certificate, and may have to do a DNA test; and
- b) File the sworn documents at the Family Registry of the Supreme Court of the Judicature.

**NB:** If the parentage of the child is in dispute, the Court may order a DNA test be done at the expense of either the applicant, the person they say is the parent, or shared by them both.

### **After you get a Declaration of Parentage**

If the Court declares a person a parent of a child, it may order the Registrar of Births to enter that person's name in the registers as the child's parent, and order that a new birth certificate be issued for the child.

# Getting Married

## Who can get married?

Both parties to a marriage must be single (unmarried, widowed or divorced) and an adult (18 years or older).

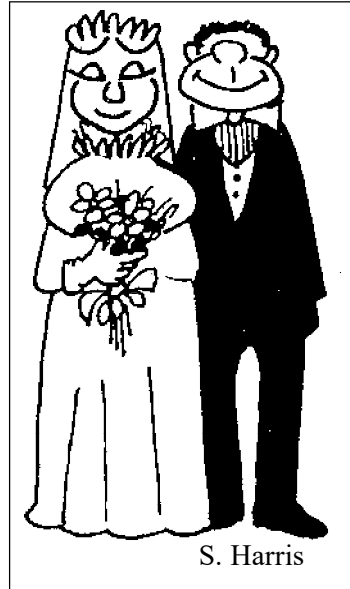
If either party is under 18, she/he must get the consent of her/his parent(s), or guardian(s), or the High Court.

## Who cannot get married?

The Law does not allow some people to marry each other, and any marriage they enter into will be void, without legal effect.

A marriage will be void if:

- (a) either party is already married to someone else (not single);
- (b) either party is under 16;
- (c) both parties are of the same sex;
- (d) the parties are near kin/ blood relations, e.g. parent and child; grandparent and grandchild; brother and sister of the whole or half-blood; niece and uncle; nephew and aunt;
- (e) the parties are related by marriage, e.g. a woman and her step-son or son-in-law or a man and his step-daughter or daughter-in-law;
- (f) either party doesn't understand that she/he is getting married;
- (g) one of the parties goes through the ceremony under threats, or is mistaken as to the identity of the other party, or as to the nature of the ceremony, or is drunk; or
- (h) any of the formalities haven't been complied with.



**Permission to get married**

To get married you must either:

- Get a License from the Minister of Home Affairs, not less than 2 (two) days before the marriage (sections 40-46). The application is by way of a petition and contains information including your names, ages, occupation, places of residence, current and prior marital status.; *or*
- Get the Superintendent Registrar of your district, to publish notice of your intended marriage for 21 (twenty-one) days and thereafter give you a Certificate that there is no objection to the marriage. The application is by Form B of the Act and the Certificate is Form C. (sections 47-52); *or*
- If Christian, Hindu or Islamic, have your minister or marriage officer publish notice of your intended marriage (called Banns) on 3 (three) Sundays or at 3 (three) religious services within 3 (three) months before the wedding and give you a certificate that there is no objection to the marriage (sections 35-39);

**Note that:**

Publication of notice of your intended marriage relates to your place of residence, to allow people where you live to know you intend to marry, and object if they wish, so if the parties live in separate districts, each must get a certificate or publish notice in their respective district.

The publication of banns, the Minister's license, and a Superintendent Registrar's certificate becomes void if the marriage doesn't take place within 3 (three) months of it and you will have to republish or get a new certificate.

**The ceremony**

A Superintendent Registrar or a marriage officer may perform (solemnize) a marriage. The Minister of Home Affairs appoints marriage officers. They may be ministers of the Christian religion or persons of the Hindu or Islamic religions.

A wedding must take place between 6 a.m. and 9 p.m., if performed by a marriage officer, and between 8 a.m. and 4 p.m. if performed by a Superintendent Registrar.



The wedding can take any form the parties choose, but there must be the marriage officer or Superintendent Registrar, and two or more witnesses, and the people to be married must clearly state that they consent to take the other as husband or wife in the presence of the witnesses and the marriage officer or Superintendent Registrar.

If the wedding takes place in a Superintendent Registrar's office no religious ceremony can be performed there.

### **Registration of marriages**

The Marriage Officer or Superintendent Registrar by law keeps a Marriage Book and as soon as they perform a marriage they must enter details of the marriage in it, and that entry must be signed by the Marriage Officer or Superintendent Registrar, and the parties, and the two witnesses.

The Marriage Officer or Superintendent Registrar must also make a duplicate entry on a separate piece of paper, have the parties and the witnesses sign that duplicate entry and then send that duplicate entry to the Registrar to be filed.

Marriages are a public record and the duplicate, and original registers may be searched by members of the public (section 63).

You can apply to the Registrar General for a certified copy of the entry of your marriage. This is called the marriage certificate and is used as evidence of the marriage, for example when registering the birth of a child or in divorce proceedings.

### **Change of surname and title**

A woman who gets married may keep her own surname, or use her husband's surname. If she decides to take her husband's surname she can keep it after the marriage ends, whether on death of her husband or divorce. Married women may use whatever title they wish, whether Miss, Mrs., or Ms.

### **Citizenship**

A foreigner who marries a Guyanese citizen can apply to be registered as a citizen of Guyana immediately after the marriage.

**Termination**

A marriage is terminated by:

- (a) the death of a spouse; or
- (b) a grant of Decree Absolute of divorce or nullity by the High Court.

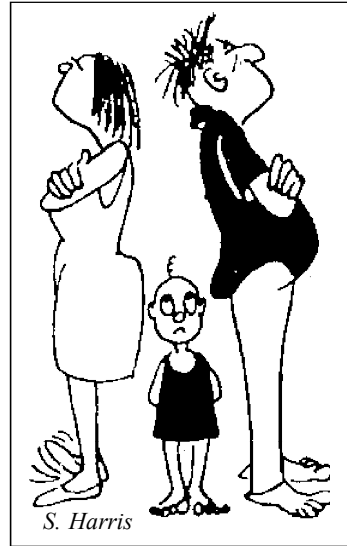
# Divorce

**What is a divorce:**

A divorce is a process of legally ending a marriage. To divorce your husband or wife you must make an application to the High Court. The application is by way of a petition. If the Judge is satisfied that you have legal reasons to end your marriage, they will issue you with a 'Decree Absolute' which is a court order that legally ends your marriage.

**The laws and rules of Guyana on Divorce are set out in:**

- The Matrimonial Causes Act, Cap 45:02
- Custody, Contact, Guardianship and Maintenance Act 2011
- The High Court (Family Proceedings and Procedure) Rules 2016

**What you must prove to get a divorce:**

Matrimonial Causes Act, Cap 45:02, section 9

There are five legal reasons that entitle you to divorce your husband or wife:

- **Adultery** – your husband or wife had sexual intercourse with someone else;
- **Cruelty** – your husband or wife has physically or verbally abused you and caused you physical or mental harm;
- **Malicious desertion** – your wife or husband has left you, or has behaved in a way that made the marriage dangerous or intolerable which caused you to leave them.
- **Insanity** – your husband or wife is of unsound mind and has been in care for more than 5 (five) years.
- **Rape** - your husband has been guilty of rape, sodomy or bestiality since the marriage.

**Divorce Procedure - How to apply:**

Matrimonial Causes Act, Cap 45:02

The High Court (Family Proceedings and Procedure) Rules 2016

Custody, Contact, Guardianship and Maintenance Act 2011

- Prepare a Petition – the petition is the document from you asking the court for a divorce. In the petition you set out the history of the marriage and details of the reasons of why you want a divorce. You must attach an original marriage certificate and birth certificates of all the children of the marriage under 18 years.
- Prepare a Statement of Arrangements for Children - this sets out information about the children, who they are living with, the details of the costs of maintaining them, and whether you intend to apply for custody, access or maintenance.
- Filing - file the Petition at the Family Registry of the High Court in Demerara, Berbice or Essequibo.
- Service - someone authorized by the court (not you) will give a copy of the petition to your wife or husband.
- Answer or cross-petition – your husband or wife can defend the matter by filing an answer saying why you should not be divorced or a cross-petition saying that they want a divorce because you are the one who acted badly.

**What happens at Court:**

The High Court (Family Proceedings and Procedure) Rules 2016

**Hearing times** – you may get a court date within 8 (eight) weeks of filing your petition if you serve promptly and if your husband/ wife does not defend the matter.

**The Hearing, undefended** – At the hearing, if your husband or wife did not defend by filing an answer or a cross petition, the Judge will read your petition, and listen to your story, and decide whether you have proved that your wife or husband has committed adultery, treated you cruelly or maliciously deserted you. If you have proved any of those the Judge will grant a Decree Nisi which is an order

saying that the marriage will dissolve if no one comes within 6 (six) weeks to give a good reason why it should not. 6 (six) weeks and 1 (one) day after the Decree Nisi, you may apply for a Decree Absolute. The Decree Absolute dissolves the marriage.

**The Hearing, defended** - At the hearing, if your husband or wife defends by filing an answer, the Judge will read the petition and the answer, and listen to both of your stories. Your lawyer will be allowed to ask your husband or wife questions (called cross-examination), and their lawyer will be allowed to ask you questions. The Judge will decide whether you have proved that your wife or husband has committed adultery, treated you cruelly, or maliciously deserted you. If you have not, the Judge will dismiss your petition and will not grant you a divorce. If you have, then the Judge will grant a Decree Nisi which is an order saying that it will dissolve the marriage if no one comes within 6 (six) weeks to give a good reason why it should not. 6 (six) weeks and one day after the Decree Nisi, you may apply for a Decree Absolute. The Decree Absolute dissolves the marriage.

**The Hearing, cross-petition** - At the hearing, if your husband or wife filed a cross petition, the Judge will read the petition and the cross-petition, and listen to both of your stories. Your lawyer will be allowed to ask your husband or wife questions (called cross-examination), and their lawyer will be allowed to ask you questions. The Judge will decide whether either of you has proved that the other has committed adultery, treated you cruelly, or maliciously deserted you. The Judge will grant the Decree Nisi to whichever of you proves the other has committed adultery, cruelty or malicious desertion. The Decree Nisi is an order saying that the Judge will dissolve the marriage if no one comes within 6 (six) weeks to give a good reason why not. Six weeks and one day after the Decree Nisi, the person granted the Decree Nisi may apply for a Decree Absolute. If that person does not apply for it then nine weeks after the Decree Nisi was granted the person against whom it was granted may apply for the absolute. The Decree Absolute dissolves the marriage.

#### **Arrangements for Children:**

The Judge may also make temporary orders concerning the custody of the children, access and maintenance.

**Information needed for the divorce petition:**

- Your name
- Your address
- Your occupation
- Your husband's or wife's name
- Your husband's or wife's address
- Your husband's or wife's occupation
- The date you were married
- The place you were married
- The first and the last places you lived since you married
- The names and dates of birth of all the children
- A list of all the times you've ever been to court concerning the marriage and/or the children
- Why you want a divorce – your reasons
- Date you separated

**Documents needed for the divorce petition:**

- Your original marriage certificate
- Original birth certificates for all children below 18 (eighteen) years old

**Information needed for the Statement of Arrangements for Children:**

- The name of each child
- Their dates of birth
- Names of the person with whom each child lives
- Their addresses
- The names of the child's school
- The financial needs of each child including food, medical care, school costs, travel.

**You may also apply for maintenance, alimony, custody and division of property at the same time.**

**Where to get help:**

You can get help filing for a divorce from:

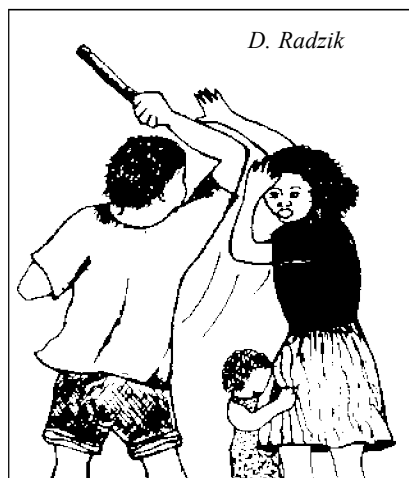
- Attorneys-at-Law
- The Legal Aid Clinic - Maraj Building, Charlotte Street, Georgetown: call/text 225-9246, 225-9238, 664-4126, 623-5586, 600-3971.
- Legal Aid Clinic - Berbice: call/text 665-1396, 600-4122.
- Legal Aid Clinic - Essequibo: call/text 664-5838, 600-4123.
- Legal Aid Clinic - Linden; call/text 444-6920, 679-9047.
- The Family Court Registry - High Court - Demerara: Tel: 226-7947 (ext. 275) or 225-4870.
- The High Court Registry - Berbice: Tel. 333-3650
- The High Court Registry - Essequibo: Tel 774-4020, 641-9966

## Protection from Domestic Violence

No one should hit you, intimidate you, harass you, or threaten you with violence. Your health, safety, and well-being is protected by law.

If someone is hitting, intimidating, harassing or threatening you or a child in your household, or if you fear they will harm you or the child, you may ask the court to (1) order them to not to hit you, intimidate you, harass you, or threaten you with violence, and to (2) order them to stay away from you, from the house, and from any place you are usually found.

The law relating to applications for protection from Domestic Violence is set out in **The Domestic Violence Act, Cap 11:09, Laws of Guyana.**



### What is Domestic Violence?

Your health, safety, and well-being is protected by law. People you associate with are not entitled harm you or threaten you with harm.

Acts that are domestic violence include:

- hitting you
- threatening to hit or physically hurt you
- raping you - (section 3 Sexual Offences Act -this includes any penetration without consent)
- constantly verbally abusing you or using abusive language
- watching your home, work, school or premises you are at
- persistently texting and calling you against your wishes
- deliberately damaging or destroying your belongings
- limiting your access to and use of your belongings or hiding them



- intimidating you by repeatedly doing and saying things to put undue pressure on you
- constantly doing and saying things to dishonour, discredit, or scorn you
- limiting your access to food or rest
- limiting your access to your children
- preventing you from spending time with your family or friends
- drugging you or forcing you to take a drug

### **Who can apply for the protection order?**

The Domestic Violence Act, Section 4 (four)

You, or a police officer, or a social worker can apply for an order to protect you, or any child (under 18) who resides in the household.

Anyone, whether female, male, LGBTQ, old or young, can apply to protect themselves. A person younger than 16 (sixteen) may apply to protect themselves if the court feels they have sufficient understanding.

### **Who can you get an order against?**

You can get a protection order stopping someone you 'associate' with from inflicting any of those acts of domestic violence on you.

Someone you 'associate' with includes a person:

- you are married to
- you were married to
- you have a sexual relationship with
- you had a sexual relationship with in the past
- you live in the same household with
- you used to live with
- you are related to
- you are currently engaged to be married to
- you were engaged to be married to
- is the parent, the adopted parent, or grandparent of your child or adopted child

**After you get an order:**

After the order is made, the respondent must obey the order as soon as they know of it. They will know of it at court if they are present when the order is made, or if they did not come to court, as soon as they are served with a copy of the order.

**What happens if the respondent does not obey the order:**

IT IS A CRIME NOT TO OBEY AN ORDER. The police have the power to arrest any person who is breaching a protection order, or harming you or anyone in your household, even before you get a protection order (section 33). When you get a protection order if the respondent harms you or tries to harm you or breaches the order in any way at all, they may be arrested, prosecuted, fined up to \$10,000 (ten thousand dollars) and jailed for up to a year (section 32).

**Duration of orders:**

A protection, occupation or tenancy order lasts for as long as the court directs (section 29) You or the respondent may apply to vary or revoke the order (section 30). if someone applies to revoke or vary it, a copy of that application must be served on you. In deciding whether or not to revoke or vary the order the Magistrate will look at how best to protect your or the child's health, safety and well-being.

**What can the court order?****PROTECTION ORDER (sections 5 and 6)**

The court may make a protection order that may:

- stop the abuser from being on the premises where you live, work, or go to school, or frequent
- stop the abuser being in your neighborhood
- stop the abuser from engaging in the harmful conduct
- stop the respondent from harassing you or psychologically abusing you
- stop the abuser, and anyone on their behalf from contacting, calling, and messaging you
- directing the abuser to contribute to maintain you or the person you are protecting
- direct who has custody of any child

- stop the abuser from taking personal property you need to use
- direct the abuser to return your personal property to you
- direct the abuser to get counselling or therapy

**OCCUPATION ORDER (sections 8 and 9)**

The court may make an occupation order granting you the right to live in the household residence, and stopping the abuser from living there, if the court finds that it is necessary for your or the child's protection.

**TENANCY ORDER (sections 11 and 12)**

If the household residence is a rented and the abuser is the tenant, the court may order that you are to be the tenant of the dwelling house instead of the abuser. The court will give notice to the landlord/owner before making this order.

**OTHER ORDERS (section 15)**

The court may also order that you have the custody and use of any furniture, household appliances and effects that you need.

**INTERIM ORDERS FOR URGENT SITUATIONS (section 5 and 27)**

If your situation is urgent and you need a protection order right away the court can make an interim protection or occupancy order even before the respondent is served. This happens when it is necessary to ensure your or the child's safety. That interim order can only last for 14 (fourteen) days maximum (section 29(4)) unless continued by the Magistrate. The interim order will specify an early hearing date to decide whether it should continue, be discharged or another order be made in its place (**section 27**).

**How to apply for a protection order:**

- Fill out an application for the protection order. You are called the applicant and the person you accuse of abusing you is called the respondent. The form to be used is printed at the back of the Domestic Violence Act (Form 2). In the application/form you must give:
  - your name
  - your address
  - the respondent's name

- the respondent's address
- details of how you and the respondent are associated
- details of the conduct you complain of

▪ **File the application (section 17)**

- File the application at the Magistrates Court Registry (section 17) in your district.

▪ **Get a hearing date (section 20)**

The court staff will fix a hearing date that falls within 7 (seven) days of your filing of the application.

▪ **Serve the application (section 21)**

The application and notice of hearing date must be served on the respondent. You don't have to serve it yourself; you can get someone to serve it for you.

▪ **Go to court for the hearing:**

On the hearing date the Magistrate will read your application and any documents the respondent has filed. You may explain your case and give your evidence verbally or in writing in an affidavit (section 23). If you have to tell your story in court you will not have to do it in public, the hearing is *in camera* and the Magistrate will get everyone who is not involved to leave the courtroom. (section 18) If the respondent does not come to court the case can go on without them, or the court may issue an arrest warrant for them (section 25). Depending on the case it may take more than one hearing.

**What must you prove: (section 5)**

You must prove on a balance of probabilities (that it is more likely than not) that the respondent has done the acts you complain of. If you have any medical evidence of injury to you bring it to court.

**What the Magistrate considers:**

Your health, safety and wellbeing are the most important considerations. In deciding what orders to make the Magistrate will also consider your accommodation and maintenance needs, the respondent's income and responsibilities, and any other relevant circumstances such as any hardship that might be caused if the order is made.

What the application looks like:

FORM 2

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

IN THE MAGISTERIAL DISTRICT MAGISTRATE'S COURT

I..... (Name of applicant)

of ..... (Address)

hereby apply under section 5 of the Domestic Violence Act, 1996  
for a Protection Order/Interim Protection Order to be made by  
the Magistrate of the district 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)

.....

Applicant

Dated the ..... day of ..... 202.....

**Where to get help:**

You can get help to apply for a protection order from:

- Attorneys-at-Law
- The Legal Aid Clinic – Maraj Building, Charlotte Street,  
Georgetown: call/text 225-9246, 225-9238, 664-4126, 623-  
5586, 600-3971.
- Legal Aid Clinic – Berbice: call/text 665-1396, 600-4122.
- Legal Aid Clinic – Essequibo: call/text 664-5838, 600-4123.
- Legal Aid Clinic – Linden: call/text 444-6920, 679-9047.
- Help and Shelter: Homestretch Avenue, Durban Park,  
Georgetown, Tel: 225-4731, 227-8353
- Red Thread: 72 Princess St, Georgetown, Tel: 227-7010
- Ministry Human Services and Social Security – Domestic  
Violence hotline - Tel: 914

# Maintenance

Maintenance is the obligation to provide another person with housing, food, clothing, education and medical care, or with the money to obtain them. The law imposes on you a 'duty to maintain' your children, your parents, your grandparents, and in some situations your husband or wife.



The laws of Guyana relating to maintenance are set out in the

- **Maintenance Act, Cap 45:03**
- **Custody, Contact, Guardianship and Maintenance Act, Act No. 5 of 2011 (CCGMA)**

The Maintenance Act provides that you must maintain:

- Your children until they are 16 (sixteen) (section 2,3)
- The children of your wife or husband who live with you until they are 16 (sixteen) (section 2,3)
- Your grandchildren until they are 16 (sixteen) (section 2,3)
- Your parents and grandparents if they are unable to maintain themselves (section 4)
- Your husband or wife if they are in a government hospital or home for destitute persons (section 11)

If you fail to maintain someone you have an obligation to maintain, they, or the person who has care and custody of them, may make an application to the court to compel you to maintain them (section 5)

and the magistrates may make an order compelling you to contribute to the maintenance of the person (section 6). If you fail to make the payments you are guilty of an offence, may be liable to a fine, or imprisonment, and the magistrate may order that a portion of your salary be paid to the complainant (section 10).

The Custody, Contact, Guardianship and Maintenance Act, Act No. 5 of 2011 (here after referred to as “CCGMA”) provides that a person (both man and woman) has a duty to maintain

- a) his/her own child,
- b) a child of his or her legal or common law spouse who, though born prior to marriage or prior to a union or cohabitation, has been living with them as a member of the family, or
- c) any child who is treated as a child of the family. (section 47 CCGMA)

If parents fail to maintain their children, an application can be made to the court to compel them to maintain the child or children (section 49 CCGMA).

If there is a dispute as to parentage of the child (that is, if there is doubt as to who is the biological father of the child) no order will be made by the court until the issue of parentage is resolved (section 50 CCGMA).

### **What can be done if a parent fails to maintain her/his child**

It is an offence to refuse or neglect to maintain a child. A person can be fined and sentenced to imprisonment for this offence (section 65 (1) CCGMA)

It is also an offence to misapply (use for one's own benefit) money received for maintenance of a child (section 65 (3) CCGMA).

Where a parent (whether male or female) fails to financially provide for a child, the child or the person with whom the child lives, can apply to the Magistrates' Court (closest to where the child or that person lives) for a maintenance order. The defaulting parent (parent who fails to pay the maintenance) will be summoned to appear before



a magistrate and can be arrested if she/he does not obey the summons. (section 49 CCGMA)

### **What happens if the father denies paternity of the child?**

If the person summoned as the father of the child (the putative/ alleged father) says that he is not the father (i.e. if he denies paternity) the magistrate will hear what he and the mother and any witnesses have to say and then decide whether or not the putative father is the father of the child (section 50 (3), (4) CCGMA).

Where this proves difficult to decide even after hearing the testimonies of the parents and any witnesses they may present to the court, the Magistrate should take all reasonable steps to ensure the issue of paternity is cleared before making any order (section 50 (3) CCGMA). These steps include referring the matter to the Supreme Court of Judicature for a declaration of paternity or non-parentage in accordance with the Status of the Children Act (Cap 46:05). (See sections 81(4) and 84(2) CCGMA. The Magistrate's Court does not ordinarily determine issues of parentage except as prescribed in sections 50 (3) and (4) CCGMA.)

If the putative father's name is on the child's birth certificate the court may make a maintenance order on the assumption that he is the father.

Where the putative father's name is not stated on the birth certificate of the child but he was declared the father by a previous order of court or via a DNA test, the court may make a maintenance order against the father (section 50 (3), (4) CCGMA).

### **Orders the court can make (section 49 CCGMA)**

The court may make orders affecting the property of the person who is required by law to maintain a child. These orders include:

- a) the transfer of their property for the benefit of the child;
- b) a lump sum payment (all at once); or
- c) periodical payments (in monthly or weekly installments).

The court may also require the parent to give some form of security, including a charge on property (e.g. a mortgage) to ensure

that maintenance payments are made. If the person fails to make payments this may result in the court ordering the sale of the property.

A person who is required to pay maintenance in respect of a child may be required to pay it to the Collection Officer at the court or to any other person the court directs (section 63 (3) CCGMA).

The court has the power to request information from individuals or organisations in relation to income and other matters pertaining to the person liable to (that is who is responsible) to maintain a child (section 52 CCGMA).

If and when paternity is not in dispute the magistrate will make an order saying how much the parent summoned must pay as maintenance for the child (section 21 CCGMA).

In deciding on the amount to be paid the Magistrate will look at the means of the parent summoned and of the other parent or anyone else who is under a duty to maintain the child. Maintenance can be ordered to be paid in any sum which the court deems fit after assessing the facts and circumstances of each case (section 50 (1) CCGMA).

The order is valid until the child is 18 (eighteen) years and may be extended to 21 years if she/he is at school or any other place of education or longer if she/he cannot maintain her/himself because of illness or special needs. The child may apply for the extension of a maintenance order before the child reaches their 18th birthday. The child may also apply for a variation of a maintenance order if that child has their 16th birthday. Applications for maintenance by a child under 17 (seventeen) years have to be made through a guardian. (sections 53 and 54 CCGMA).

A maintenance order made by a magistrate may be appealed to the Full Court but the order must be obeyed until the appeal is heard. (section 66 CCGMA).

### **Enforcement**

If a person against whom a maintenance order has been made fails to make payments, the arrears can be recovered by:

- attachment, i.e. having the amount due deducted from their earnings;

- seizing of belongings or distress, i.e. having her/his personal belongings (except tools of trade and clothing, bedding, furniture, equipment and other items necessary for satisfying basic domestic needs) taken and sold and the proceeds of sale used to pay the arrears. If she/he does not have enough property to cover the arrears she/he can be imprisoned and she/he would still be liable for arrears unless the court orders otherwise. (section 57 CCGMA).

# Custody

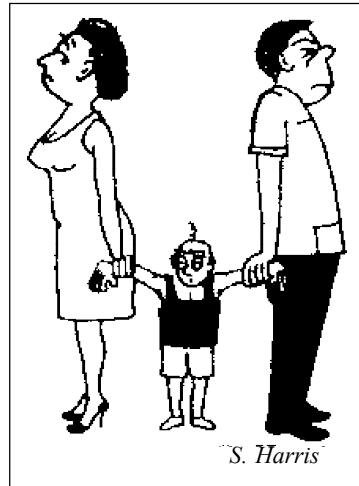
## What is custody?

Legal custody means the right to make major long-term decisions for a child, including those concerning education, medical care, moral and religious upbringing and marriage.

The laws relating to custody are set out in the *Custody, Contact, Guardianship and Maintenance Act, Act No. 5 of 2011 (CCGMA)*.

### Key points

- Primary custody (also called care and control) means the right and duty to look after the child on a day-to-day basis.
- An access or contact order gives the parent with whom the child is not living with the right to see the child.
- The mother and father of a child are equally entitled to the custody of the child (section 8).
- A child has the right to know both of its parents (section 8).
- In any decision the Court shall have regard to the best interests of the child (sections 3, 10).



## Who is entitled to custody? (section 2)

- a) The child's parents, the mother and the father, (whether biological also called natural or adoptive) (section 8(2));
- b) the person who acknowledges the child as a child of their family (who could be a step-parent);
- c) a person who, while not being the parent(s) of the child, has care or control of a child, (section 12 (1)) and
- d) any person appointed by the court.

The biological mother and father of a child are equally entitled to custody of the child. The biological parents and the court are the only persons who can determine matters of custody in relation to any child under the age of 18 (eighteen) years.

Where two or more persons (including parents) have parental rights in relation to a child each of them may exercise that right separately without the consent of the other (*section 3(3)*). However, where one parent wants to travel out of the country with the child, or where one parent wants a child to live with him or her outside of the country, the written consent of the other parent (in the form of an Affidavit or Deed of Consent) is needed. (*section 3(4)*).

The parental rights apply whether a child is born in or out of wedlock. The father of a child born out of wedlock is the man who qualifies to be the father under the Status of Children Act or who has acknowledged the child to be his, or the man whom a court has found to be the father. (*section 2*).

If the persons having parental rights in relation to a child cannot agree on a question affecting the child's welfare, they may apply to the Family Division of The Supreme Court of Judicature for a decision. In deciding such disputes, the court has to consider the child's welfare as the first and most important consideration. (*sections 32 (3), 3(1) and 16 (1)*).

If one parent dies, the parent who is still alive (referred to as the surviving parent) will have all parental rights. However, where a guardian was appointed by the deceased parent who had custody (through a will, deed or other recognised legal document), or by the court, that person will act jointly with the surviving parent. (*section 31*).

When a child is adopted, all parental rights pass from the biological parents to the adoptive parents.

A person who does not have parental rights in relation to a child but who has care or control of that child may apply to the Family Division of the Supreme Court of Judicature for custody of the child (*section 12(1)*). That person must be at least eighteen years of age and no more than fifty years older than the child (*section 12(2)*).

### **Agreements about custody**

Parents who are getting divorced or are separating can continue to hold parental rights jointly without any order of the court. In this case,

the parents may agree on any and all matters relating to the child or children under 18 years of age. These matters may include, where the children are to live and how often they are to visit the other parent with whom they will not be living (*section 5 CCGMA*).

### Disputes over custody and access

Either or both parents, or any other person who has parental rights by virtue of an order of the court, may apply to the court for an order relating to custody of, access to, or contact with a child (*section 7*).

A divorce or other court ordered separation may be delayed until issues regarding the welfare (including the issues of custody and access) of the children are dealt with (*section 5(1)*).

### How to Apply for custody?

You may apply to the Family Division of the Supreme Court of Judicature in person or through an Attorney-at-Law for a custody order. You must take the following documents with you:

- (a) birth certificates of the child and of yourself;
- (b) your marriage certificate or decree absolute; and
- (c) death certificate(s) of the parent(s) of the child, where any of the natural parent is deceased;
- (d) police clearance for both applicants

The Application is made using the Forms prescribed in the Family Court Rules, namely Form 2 (Statement of Arrangements for Children), Form 9 (Application relating to Children) and an Affidavit in support of Form 9.

Where the application is being done through the Family Court Registry, the available dates for interview and application are provided by the staff of the Family Court Registry.

### Leaving the country

A person (who is not either a parent or a person having parental rights) is not entitled to take or keep a child out of Guyana unless the court gives permission, or unless a person who has parental rights

gives consent. Where both the child's parents are the ones who have the parental rights both of them must consent. (*section 3(4)*)

### Change of Name

A parent cannot change a child's surname except with a Judge's permission or the written consent of the other parent.

### Access or contact

The court may order 'reasonable access' and leave it to the parties to make their own specific arrangements for frequency, dates, and times of access, or it may specify the frequency, dates and times of access or contact.

Where the child has been living with one parent only, if the other parent wants the child to go live with them, they must get an order of court, unless the other parent agrees. (s. 8(4))

Where the child has been living with one parent only, the other parent has a right to access and contact. (s. 8(4))

Where access or contact arrangements are made between the parents, they can vary those arrangements by agreement (*section 8(5)*). Where, however, the arrangements are made by the court, and there is a dispute or a change in the circumstances (living arrangements, finances, concerns about the child's safety) either parent can go back to the court and ask for a variation of the order. Very rarely will the court refuse access to or contact with a parent.

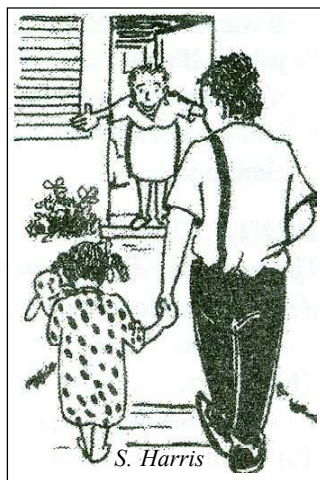
If the parent with whom the child lives prevents the other parent from having access to the child, the court may direct that a social worker or the police locate, take charge of and deliver the child to the parent being denied access. (*section 25*).

# Adoption

## What is adoption?

Adoption is the legal process whereby parental rights to a child are transferred permanently from the biological parents to other person (s) who are not the natural parents of that child (the adoptive parent).

An adopted child is treated by the law as if she/he is the natural child of the adopter(s) and has full legal rights to the property of the adopted parent(s). In deciding whether to make an adoption order, the welfare of the child is the Court's first and most important consideration.



The law relating to adoption in Guyana is set out in *the Adoption of Children Act Cap. 46:04*

## Who can be adopted?

A person under 18 (eighteen) years of age who has never been married and who lives in Guyana. (*section 16*)

## Who can adopt? (*section 17*)

You can apply to adopt a child if you are:

- (1) a Guyanese national and you live in Guyana; or
- (2) a Guyanese national and you live outside of Guyana; or
- (3) a former Guyanese national who has acquired the citizenship of another country; or
- (4) a non-Guyanese; and
- (5) between 18 (eighteen) and 65 (sixty-five) years old, and the age difference between yourself and the child is not more than 50 years or not less than 17 (seventeen) years.



**Note**

1. A mother or father of a child may adopt a child either alone or jointly with her/his spouse (where the spouse is not the natural parent of the child) (*section 14*). Spouse includes a single man or single woman living together in a common law union at least five years prior to the adoption. “Father” includes a man who has treated the child as his own and has previously contributed to the child’s maintenance even if he is not the natural parent of the child (*section 3*).
2. If you are married, you and your husband/wife should apply jointly. If only one of you applies, the other must consent and must give a reason why you are not adopting, jointly (*section 28*).
3. If you are a single male, it is only in exceptional circumstances that you will be allowed to adopt a female child to whom you are not related. (*section 18(2)*).
4. The child to be adopted must be in the adoptive applicant(s) care for at least three (3) months before the application for adoption is made (*section 10*).

**Who must consent to an adoption?**

1. The parent(s) of the child. (*section 19 (1)* )
2. The man who is or was married to the mother of the child if the child was born during the marriage or within 300 days after the termination of the marriage or a decree of judicial separation. (*section 19 (1)* )
3. Every person who has been ordered by a court to maintain the child or who has entered into an agreement to maintain the child. (*section 19 (1)* )
4. The spouse of the person applying to adopt the child. (*section 15* )
5. The child if she/he is 12 years or older. (*section 18 (2)* )

**Waiver of Consent**

The court may waive the consent of a parent, guardian, or the man who is or was married to the child's mother at the time of conception or birth, if the person (section 20):

- (a) has abandoned, neglected or constantly ill-treated the child;
- (b) cannot be found or is not capable of giving consent;
- (c) is withholding consent unreasonably;
- (d) has not been performing the parental duties in relation the child; or
- (e) has exposed the child to unnecessary risks.

The court may waive the consent of a spouse if she/he (section 15 (2)):

- (a) cannot be found;
- (b) is incapable of giving consent; or
- (c) the spouses have separated and are living apart and the separation is likely to be permanent.

The court may waive the consent of the child if the court is satisfied that the child is not capable of giving his or her consent.

**How to apply for an adoption order**

The first step is to apply to the Childcare and Protection Agency for a recommendation that you be allowed to adopt the child (*section 4*). You go to the Agency in person and must take the child and the parent(s) of the child with you. You must also take the following documents with you:

- (a) birth certificates of you and the child;
- (b) your marriage certificate or decree absolute;
- (c) death certificate(s) of the parent(s) of the child;
- (d) police clearance for both applicants

An application form will be issued to you by the Childcare and Protection Agency together with medical forms to be filled and returned to the Agency.

### **Appointment of the Childcare and Protection Agency as guardian ad litem**

Where the parent, guardian or other person who has to consent to the adoption of the child has consented to the adoption, or it has been decided to ask the court to waive the consent, the Childcare and Protection Agency will issue a letter consenting to act as the guardian ad litem of the child (i.e. the guardian of the child for the purposes of the adoption process) (*section 7*).

The adoptive parent(s) must then take that letter to their lawyer so that application can be made to the court for the appointment of the Agency.

Once the guardian ad litem order is granted, the applicant(s) must submit a certified copy of the order to the Agency for preparations to be made for the Adoption Board hearing.

The duty of the agency is to safeguard the interests of the child (*section 48*). The Agency (an officer from the Agency) will visit your home to make investigations concerning the adoption of the child and submit a report on its investigation to the Adoption Board and the court.

If the Adoption Board after the investigation and interviewing you at the hearing, finds you suitable to adopt the child, the Agency will give you a letter recommending that the child be placed in your care and custody for the duration of the adoption process (*section 8(1)*). Your lawyer may then file an application to the High Court that the child be placed in the care and custody of the adopter (*section 8(2)*).

The court may make an order authorizing the adoption of the child (*section 13*).

### **Effects of Adoption Orders**

An adoption order extinguishes the legal rights and obligations and duties of the natural parents in relation to the adopted child and grants and imposes those parental rights and obligations and duties on the adoptive parent(s).

The adopted child may use the surname of the adoptive parent(s) (*section 29*) and is entitled to inherit property from the adoptive parents as if they were the biological child (*section 32*).

An adopted child has the right to know his or her natural parents (*section 41*).

### **Registration of Adoption and New Birth Certificate**

A certified copy of the adoption order must be delivered to the Registrar General for the details of the adoption to be entered in the Adopted Children Register. That register is not open to the public (*section 36(3)*). Adoptions are confidential (*section 35*).

The Registrar General will issue the adopted child a new birth certificate in the name given to the adopted child in the adoption order and it shall not be distinguishable from any other birth certificate issued (*sections 36 and 37*).

### **Revocation of adoption order**

The court may revoke an adoption order if it was obtained by fraud or if it is in the best interests of the child (e.g. if the adopted parents abuse their parental rights or neglect or abandon the child in any way) (*section 40*).

### **It is an offence to:**

- advertise that you want to adopt a child or that you are willing to make arrangements for the adoption of a child or that the parent(s) or guardian or a child would like to have the child adopted (*section 39*); or
- make or give or agree to or offer to make or give a payment or reward in connection with an adoption or to receive or to agree to receive or attempt to obtain such a payment or reward. (*section 6(2)*)

If you commit any of the acts above you may be charged and prosecuted in the Magistrates' Court.

# Protection of Children

This Act seeks to protect children at risk, children in difficult circumstances and children generally. A child is a person under the age of 18 years, whether born in or out of wedlock, and who has never been married. A person with a disability (PWD) is treated as a child regardless of the person's age.

The laws of Guyana relating to the Protection of Children are set out in the **Protection of the Children Act, Cap 46:06 (hereinafter referred to as PCA)**.

## **The Childcare and Protection Agency**

This Agency has the responsibility to protect children. The Agency intervenes where children are -

- abused, or
- in unsafe or unhealthy situations, or
- neglected or abandoned. (*section 5 Childcare and Protection Agency Act, Cap 46:07 (hereinafter referred to as PCA)*).

**The Childcare and Protection Agency is likely to intervene if a child is:**

- being physically or emotionally harmed by anyone;
- at risk of being physically or emotionally harmed by anyone;
- being sexually or emotionally abused or exploited;
- at risk of being sexually or emotionally abused or exploited;
- abandoned;
- living in a situation where there is violence of any kind including domestic violence;
- left unsupervised;
- deemed to have killed or seriously injured someone or caused serious damage to someone's property;

- deemed on more than one occasion to have injured someone or threatened to injure someone;
- deemed on more than one occasion to have injured a bird, an animal or other living thing or has threatened to injure such living thing;
- pornography and other sexual content or object;
- sent nude pictures or videos to a child or requested to send same to anyone else (especially an adult);
- is made to sell tobacco, drugs or alcohol or work on a premise that sells tobacco, drugs or alcohol; or
- denied, by the parent(s) or guardian(s), essential medical, psychiatric, surgical or remedial treatment that is recommended by a registered medical practitioner or doctor.

*(sections 6 and 50 PCA)*

### **Citizens have a duty to report if a child needs protection**

If you know that a child is or may be in need of protective intervention you must as soon as possible make a report to the Director of the Childcare and Protection Agency or a probation officer or a police officer.

The police officer to whom a report is made must immediately inform the Director of the Agency of the report. He or she must also immediately investigate the matter and submit a report of their findings to the director.

### **Special Duty to Report** *(section 7 PCA)*

If you are a professional person such as a/an:

- Health Care Worker;
- School Principal, Teacher;
- Social Worker,
- Family Counsellor;

- coach;
- religious leader;
- operator or employee of a child care service;
- police officer;
- attorney-at-law;
- member of a non-governmental organization which provides special services for children;
- person who is entrusted with the care of children;
- mediator; or
- coroner

and while performing your duties you suspect that a child is or may need protective intervention you must make a report to the Director of the Agency or a probation officer or a police officer. (If you fail to make such a report you may be charged and, if found guilty by a magistrate, you may be fined. (*section 7(6) PCA*))

If you make a report and someone interferes with you or harasses you, you should make a report to a police officer who will have that person charged and if the person is found guilty the magistrate may fine or sentence the person to prison. (*section 7(8), (9) PCA*)

**Note:** There is no breach of confidentiality in relation to a child who is or may need protective intervention. That is to say, if you become aware of risk or potential risk to a child in the execution of any duty, including a professional duty, the duty of confidentiality that ordinarily governs your profession does not apply to prevent you from reporting the matter. (*section 7(7) PCA*)

### **Removal of child** (*section 14, PCA; Family Court Rules Order 9*)

If the Director of the Childcare and Protection Agency or a social worker determines that it is in best interest of a child that the child be removed from a particular environment, the Director or social worker may apply to the court for an order to remove the child. The court may make an order that the Director or social worker enters premises

or a vehicle or board a vessel or an aircraft by force if necessary to remove a child.

The application to the court is ideally made before the removal but can also be done as soon as possible after the removal.

#### **Medical treatment of child** (*section 19, PCA*)

The Director or social worker may apply to the court for an order that a child receives medical treatment which the child's parent has refused to obtain for the child or refused to permit the child to obtain.

#### **Protective intervention hearing** (*section 21, PCA*)

This is a court hearing in which the judge decides whether the child needs protective intervention and the nature of the intervention. **The child is entitled to have a say at this hearing and the State must provide assistance for the child to have legal representation.**

#### **Penalty for placing a child in harm or at risk of harm** (*sections 49 and 50 (2) and (3) PCA*)

If any person who is responsible for the care of a child (parent, caregiver, counselor, social worker, teacher, coach, religious leader, etc.) does or fails to do something which causes the child to be placed at harm or risk of harm as defined in section 6 PCA, that person is liable to be charged, and if guilty can be made to pay a fine of between \$200,000.00 and \$400,000.00 or may be imprisoned for up to six months.

#### **Penalty for removing a child from protective custody** (*section 51 PCA*)

Any person that removes or attempts to remove a child from protective care, or entices a child to leave the care or custody of the Director, or houses a child who has left the care or custody of the Director, commits an offence and if charged and found guilty, can be imprisoned for up to one year.



## The Married Person Property Act

**The Married Persons Property Act, Cap 45:04** (hereinafter referred to as MPPA) of the Laws of Guyana, sets out the property rights and obligations of married people, and empowers the Supreme Court of Judicature to make orders concerning how the property acquired by a woman and man during their relationship is to be shared when the relationship ends.

The act affirms that men and women may each own property in their own name, and are each responsible for their own debts. The act empowers the court to decide who has title to any property in the possession of either the woman or man in a relationship, and to direct how property is to be divided by a couple when their relationship ends.

### Does the Act only apply to couples who are legally married?

No, the act applies to:

- a man and woman who are legally married, and
- a man and a woman who (a) are both single (i.e. widowed, divorced or not legally married to someone else) and who (b) have lived together (common law union).

### Applications for division of property (*section 15*)

Who can apply to ask the court to determine title to and division of property?

- a man and woman who are legally married, and
- a man and a woman who are both single and who have lived together in a common law union.

NB. This act does not apply if either you or the respondent is legally married to someone else.

### When can they apply? (*section 15A*)

At any time during the marriage or union or within three years after the end of the marriage or union.

**What can the claimant/applicant ask for?**

In relation to property acquired during the time of the parties union, the applicant may ask:

- to be declared owner of property
- to be declared part owner of property
- to be given possession of property
- That the respondent has the property but give them a cash sum equal to their interest in it
- That property be sold and they get their share of the proceeds of the sale

**‘PROPERTY’ includes any land, buildings, vehicles, household appliances and furniture, cash in the bank, shares in a company, in the possession of either party no matter whose name the legal title is in.**

**What does the court consider, what principles must the court apply? (section 15)**

The court’s decision depends upon:

- how long you have lived together;
- whether or not you have worked outside the home;
- if you lived together for less than five years the court has to take into account your contribution to the marriage and the welfare of the family, including your contribution of looking after the home and caring for the family;
- if you lived together for more than five years and you did not work outside the home, the court may award one third of the property in dispute to you; and
- if you lived together for more than five years and you worked outside the home the court may award one half of the property in dispute to you.

Two cases in which the Court discussed those principles are:

- **Fraser v Fraser No. 723/2103** (HC Demerara) (unreported)
- **Seweda v Seweda** (2012) No. 39 Appeal Demerara (unreported)

**What if the property has been sold?**

The court can order what shall be done with the proceeds of sale or make an order in respect of property bought with the proceeds of sale.

**Who owns savings from housekeeping money?**

If your wife/husband gives you money to pay household expenses any money left over or property bought with money left over will belong to both of you in equal shares unless you have agreed otherwise.

**What general rules apply to ownership of property during a marriage?**

1. You each continue to own property, which you had before the marriage.
2. If property is bought in both your names *jointly*, you will each own an undivided half of it. You can each sell your undivided half share without the consent of the other but it is usually difficult to find a buyer for an undivided interest in property. If one of you dies the other will automatically inherit the deceased's share and become the owner of the whole property. Either of you can stop this happening by "severing the joint tenancy" i.e. changing from joint ownership to ownership in equal shares.
3. If property is bought in both your names *in equal shares* you will each own an undivided half of it. You can each sell your undivided half share without the consent of the other but it is usually difficult to find a buyer for an undivided interest in property. If one of you dies the other will not automatically inherit the deceased's share so you can each leave your share to someone else in your will.
4. If your legally wedded husband buys property and puts it in your name it is presumed that he has given it to you. That presumption can be rebutted.
5. If your legally wedded wife buys property and puts it in your name it is presumed that she is still the real owner. That presumption can be rebutted.
6. If property is bought in the name of your wife/husband but you put a lot of money toward buying it or improving it you have a right to a share in the property. The amount of your share will depend on the size of your contribution. If your wife/husband does not accept that you are entitled to a share in the property you can ask the court to decide the matter.
7. If property is bought by and in the name of your wife/husband she/he can sell it without your consent. But you can bring a claim under the Act in relation to the disposition of that property.

# Making A Will

The **Wills Act, Cap 12:02** sets out the rules to making a valid will.

## What is a Will?

A will is a legal document you make when you are alive that sets out what you want to be done with your property when you die, it is also called you “Last Will and Testament or Testament”.

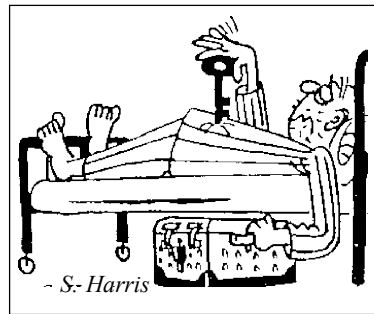
You don’t have to make a will. If you die without a will your property is shared by your legal spouse and all your children (if any child died after you, you shares will go to their beneficiaries). If you don’t have descendants (your children and the children of any dead child) then to your spouse alone. If you don’t have a spouse nor descendants, then to your parents and siblings. This is set out in section 5 of the Civil Law of Guyana Act, Cap 6:01.

You should make a will if you wish for your property to go to a specific individual otherwise it will be shared by your spouse and all your children.

Your will is a legal document that sets out how you want your property to be disposed of when you die. You may also set out who you wish to care for your minor children.

A person who makes a will is called a *testator* (male) or *testatrix* (female) and dies *TESTATE* (with a will). If you do not make a will, you die *INTESTATE* (without a will) and your property is disposed of according to the Law of Intestate Succession set out in the Civil Law of Guyana Act.

In a will a testator usually appoints someone to administer her/his estate which means name a person to take control of your property and carry out your wishes. Your estate is the property you own at the date of your death. That person is called an *Executor* or *Executrix*. More than one executor/executrix can be appointed. The people receiving property in your will are called *Beneficiaries*.



If you die without a will the person appointed to take charge of your property and distribute it according to the rules in the Civil Law of Guyana Act, is called an *Administrator or Administratrix*, and the people who are entitled to share your property are called your *Intestate Heirs*.

### **Making a Valid Will**

The Wills Act, Cap 12:02 of the Laws of Guyana, sets out the rules to make a valid will.

- You must be at least 18 years old to make a will, and of sound mind, and you must be making a will of your own free will, not under the influence or forced by another person.
- Your will must be in writing.
- You must sign your will at the end of all the writing. If you cannot write you may put your thumb print. If you are using a thumb print you should have a Justice of the Peace witness it.
- You making a will must be 'witnessed'. Two people must be there at the same time when you sign your will, and they too must at the same time sign it. They are called your witnesses. Beneficiaries (people receiving a gift in the will, and their spouses cannot be witnesses.

### **Effects of a will**

A will takes effect when you die. You can deal with your property however you want even though you have spoken of that property in your will. This means that you may change your mind, revoke or change your will at any time before you die. It also means that you can give away or sell your property before you die even though you have spoken about it in your will.

### **How to alter or make changes to your will?**

You may change your will by making what is known as a CODICIL. A codicil is a document which is used to amend or revoke a will. The same rules to make a will apply to making a codicil.

**How do I cancel/ revoke my will?**

You can CANCEL/REVOKE a will in 3 ways:

- By intentionally physically destroying it, such as burning it or tearing it up.
- By a later will or codicil that makes it clear that the earlier will is cancelled, or by disposing of all your property.
- Getting married automatically revokes any will you have. So if you get married, make your will again.

**How to keep your will safe?**

A will once made should be kept in a safe place. You do not have to share its contents with the beneficiaries or anyone. You do not have to give copies to anyone. You should keep it in a safe place where it can be found by your family when you die or you may deposit your original will at the Probate Section of the Supreme Court of Judicature. The Probate section will register your will, keep it safe and not allow anyone to open it until you die.

**Contents of a will**

- Your personal information
- Who you appoint as executor/executrix
- Your various property and to whom they go (your assets and beneficiaries)
- Who you designate as guardian(s) of your children
- What should happen to your pets
- Your signature
- Your witnesses' signatures and information

Note that your property includes goods, jewelry, furniture, vehicles, cash in bank accounts, or land. Give full details. If goods and vehicles describe them, if cash at a bank name the bank and give the account number, if land give the address and any document of title). It may be best to have a lawyer help you draft and properly execute your will.

**Example of a Will****LAST WILL AND TESTAMENT**

THIS LAST WILL AND TESTAMENT is made by me, (testatrix's name) of (testatrix's address) Guyana, being of sound mind and memory and understanding and acting of my own free will.

I hereby revoke any and all previous wills and testamentary dispositions made by me and declare this to be my last will and testament.

I appoint (name of executrix) of (address of executrix) to be the executor and trustee of this will.

I give my (name and give details of item of property) situate at (location of property) to (name beneficiary) of (address of beneficiary).

I give my (name and give details of item of property) situate at (location of property) to (name beneficiary) of (address of beneficiary).

I give my (name and give details of item of property) situate at (location of property) to (name beneficiary) of (address of beneficiary).

I give the residue (residue means whatever you own that you didn't specifically gift above) of my estate to (name beneficiary) of (address of beneficiary).

In witness whereof, I, (name of testatrix) have hereunto set my hand this (Month) (day) (year) in the presence of subscribing witnesses.  
Testatrix's signature

.....  
The foregoing instrument was at the date hereof in our presence, signed by (name of testatrix) and declared by her to be her will, and at her request witnessed by us in her presence and the presence of each other.

Witnesses:

Witness 1 signature: .....

Witness 1 details: name, address, occupation, telephone number

Witness 2 signature: .....

Witness 2 details: name, address, occupation, telephone number

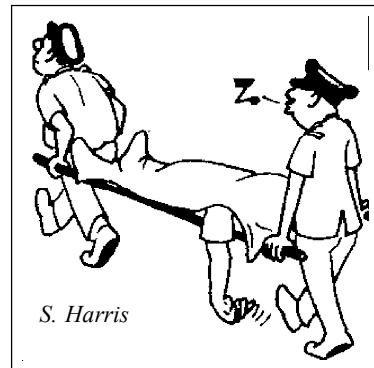
# Intestacy

## INTESTACY – Dying without a will

### What is intestacy?

When a person dies without leaving a will (valid will), that person died intestate (no will/testament). If a person dies leaving a will or 'testament' they died testate (with a will/testament).

When a person dies testate, their will declares how they wish their assets to be disposed. If a person dies intestate with no will, the law sets out how their assets are to be disposed of – the rules of intestate succession. Those rules are set out in **section 5 of the Civil Law of Guyana Act, Cap 6:01**.



### The Rules of Intestate Succession

Section 5 of the Civil Law of Guyana Act, Cap 6:01 says that if you die without a will your property (all of your property is collectively called your 'estate') goes or is distributed to members of your family (called your heirs) in the following ranking and amounts:

- Your surviving spouse 1/3 share, and 2/3 share to your children equally, and if any of them died after you their share will go to their children.
- If you have no spouse, then all to your children equally, and if any of them died after you their share will go to their children.
- If you have no children and/or grandchildren (your descendants), then all to your surviving spouse.
- If you have no spouse or children or grandchildren, to your parents.



- If only one parent survives you, then the remaining parent and your brothers and sisters equally, and if no parent, all to your siblings equally.
- If no spouse, descendants, parents, siblings, then it goes to your aunts and uncles.
- If no family, your property goes to the state.

**Note that:**

- “child” includes child born out of wedlock/marriage;
- relatives of the half-blood rank equally with those of the whole blood; and
- An heir (one of your family entitled to a share) can renounce or give up that share. If they do their share gets divided amongst the other heirs.
- An heir after accepting their share may then gift their share to another heir.

**Who distributes the estate or shares out the property?**

An heir can apply to the High Court of the Supreme Court of Judicature to be appointed *Administrator/Administratrix* of the estate. The court will give them a document called *Letters of Administration* which entitles them to deal with the property of the deceased following the rules of intestate succession set out in section 5 the Civil Law of Guyana Act.

It is usual for the person(s) who is the major heir of the estate to apply for letters of administration. If no heir wants to administer the estate, the Public Trustee (a government official at the Ministry of Legal Affairs) may be asked to do so. If someone is owed money by the estate, she/he can apply for letters of administration if no heir has done so.

Only people legally related to the deceased may apply for letters of administration. A common law spouse may not apply. The adult children of a common law union may apply.

**Duties of the Administrator/Administratrix**

Once a grant of Letters of Administration has been issued the Administrator / Administratrix must:

- collect all the assets of the estate including money owed to the deceased;
- put at least 2 weekly notices in the Official Gazette and a newspaper calling on people owed money by the deceased to send in their claims within 3 months of the first notice;
- at the end of the 3-month period pay off all debts, including the funeral expenses;
- distribute (share out among the beneficiaries in accordance with the Intestacy Rules) what is left of the estate after all debts have been paid. This should, if possible, be done within a year after the grant of representation; and
- give an account of the estate to the heirs to the High Court.

Administrator's/ Administratrix's must not make a profit out of their dealings with the estate. They can however take expenses and are entitled to their share of the property. If they fail to carry out their duties properly, they will be personally liable to the heirs.

If an Administrator/Administratrix is unable or unwilling to carry out her/his duties, she/he can renounce/give up the grant of letters of administration, and a new person may apply to be appointed to carry out those duties.

# Probate & Administration of Estates

## *How to deal with the property of the deceased*

The Laws of Guyana governing how to deal with the property (estate) of deceased persons are set out in:

- The Civil Law of Guyana Act, Cap 6:01
- The Deceased Persons Estates' Administration Act, Cap 12:01
- The Tax Act, Cap 80:01 (section 12)

## **Get permission to deal with the property - Grants of Representation**

When a person dies their Executor/Executrix named in their will, or if they have no will, one of their heirs (a family member entitled to a share of their property) must apply for a grant of representation in their estate before dealing with the property of the deceased.

The permission/grant is given by the High Court of the Supreme Court of Judicature. The grant (a document) issued to executors/executrices named in the will of a person who dies testate (with a will) is called a grant of Probate and the grant issued to the heir who wants to deal with the estate of someone who died intestate (without a will) is called Letters of Administration.

If an executor/executrix or intended administrator/administratrix lives overseas or is otherwise unable to apply in person, she/he can appoint someone to do so by Power of Attorney.

## **How to obtain Probate or Letters of Administration?**

1. Pay any estate duty/tax due by law to the Guyana Revenue Authority (GRA) and get a Certificate of Proper Officer which certifies that you have paid estate duty. Section 12 of the Tax Act, Cap 80:01 imposes a tax (referred to as a process fee in the act) on the property of a deceased person, The rate of the tax is  $\frac{1}{2}$  of 1 percent of the gross value of the property above \$100,000.

To pay estate duty/tax and get the certificate you must:

- Gather a list of the deceased's property and all title documents
- Get a valuation of the property (land, buildings, vehicles, shares in companies)
- Prepare a 'Statement of Assets and Liabilities' listing all the property of the deceased and their value, and all the debts of the deceased
- Deliver to the GRA:
  - An oath /affidavit sworn by the Executrix/Executor or intended Administrator/ Administratrix;
  - Three copies of the Statement of Assets and Liabilities;
  - a copy of the death certificate;
  - the will, if any;
  - a copy of the transports/titles to immovable property;
  - registration certificates of any vehicles;
  - certificates of valuation of the assets;
  - letter(s) from bank(s) or share registry giving the value of the bank account(s) or share(s) at the date of death; and
  - a Power of Attorney, if applicable.
  - The Identification (ID) card and Tax Identification Number (TIN) certificate of the intended Administratrix/Administrator or executrix/executor.
- Pay duties and obtain the certificate of proper officer from GRA.

2. Apply to the High Court of the Supreme Court of Judicature of Guyana, for a grant of Probate or Letters of Administration. File at the Probate Registry of the High Court:
  - Oath of Executrix/Executor or Intended Administratrix/Administrator. This is an affidavit (a sworn statement in writing) by the Executor or Intended Administrator containing information about the deceased and an undertaking to administer the estate properly; and

- Certificate of Proper Officer from GRA
- Statement of Assets and Liabilities
- Death certificate
- Will, if any
- Affidavit of witness who attested to the will
- If applying for letters of administration possibly a consent from the other heirs
- a Power of Attorney, if applicable.

#### **Duties of an Executor or Administrator**

According to sections 33 to 52 of the Deceased Persons Estates' Administration Act the executor or administrator must:

- (1) collect all the assets of the estate including money owed to the deceased;
- (2) within 2 weeks of getting the grant publish a notice in the newspaper calling on people owed money by the deceased to send in their claims within 3 months;
- (3) at the end of the 3-month period pay off all debts of the deceased, including the funeral expenses;
- (4) distribute (share out among the beneficiaries in accordance with the will or the Intestacy Rules) what is left of the estate after all debts have been paid. This should, if possible, be done within a year after the grant of representation; and
- (5) give an account of the estate to the beneficiaries and file an account of their dealing with the estate at the High Court.

#### **Note:**

Executors and Administrators:

- must not make a profit out of their dealings with the estate. They can however take payment for expenses and are entitled to any gift left to them in the will;

- are personally liable to heirs and beneficiaries if they fail to carry out their duties properly;
- can renounce the grant if they are unable or unwilling to carry out their duties. A new person may apply to be appointed to carry out those duties.

# The Family & Dependents Provision Act (F.D.P.A)

The Laws of Guyana relating to Family and Dependents of a deceased person is set out in the **Family and Dependents Provision Act, Cap. 12:24**.

Dependents are people who depend on you for financial support, and may include your children, your legal or common law spouse, and family members. This act is intended to protect dependents by making sure they continue to get financial support or property from your estate when you die.

## What is the purpose of the act?

When a person dies without leaving a will that person died intestate (no will/testament) and the law sets out how their assets are to be disposed of – the rules of intestate succession. Those rules are set out in section 5 of the Civil Law of Guyana Act, Cap 6:01 and sets out how your property is to be distributed to members of your family (called your heirs).

In both cases, where a person dies either with or without a will, the will or the rules of intestate succession, may not make provision for people the deceased may have been financially supporting, for example, a common law wife or husband, or grandparents, or other people who the deceased was supporting at the time of their death. This may lead to great hardship for those people. This act means to protect those people and ensure they continue to be provided for out of the estate of the deceased person.

Under the act family members and dependents can apply to the High Court of Supreme Court of Judicature for financial provision to be made for them out of the property left by the deceased, if they are to get nothing under the will or the rules of intestate succession, or if what they are entitled to is not enough.

**Who Can Apply?**

1. The wife or husband of the deceased. “Wife” includes a single (unmarried, widowed or divorced) woman living together with a single man for more than five years before the date of death and “husband” includes a single (unmarried, widowed or divorced) man living together with a single woman for more than five years before the date of death.
2. A child of the deceased, whether born in or out of wedlock or legally adopted.
3. Any person who was treated by the deceased as a child of the family in relation to any marriage of the deceased.
4. A dependent (any person who was maintained wholly or partly by the deceased immediately before the date of death). This allows, for example, a woman who was living with and maintained by a man who was married to someone else, or a married man living with and maintained by another woman, to apply.

**What can the court do?**

If the court is satisfied that what, if anything, an applicant will get under the will or on intestacy is not enough it has very wide powers. It can order that the applicant:

- (a) receive periodical payments; and/or
- (b) receive a lump sum payment; and/or
- (c) be given property left by the deceased; and/or
- (d) be given property bought with money left by the deceased.

If the applicant is the wife or husband of the deceased, the court can award her/him what it considers reasonable whether for maintenance or not. In all other cases the applicant can only be awarded reasonable maintenance.

If the applicant is in urgent need the court can make a temporary order for periodical payments while it decides what to do.

The court has wide powers to make changes to or end orders for periodical payments.



### **How does the court decide?**

In deciding whether the applicant should get anything, and if so what, the court has to look at:

- (1) What the applicant has, and what she/he needs;
- (2) What the beneficiaries and heirs (people entitled under the will or on intestacy) have and need;
- (3) How much property the deceased left;
- (4) Any physical or mental handicap that the applicant or any beneficiary has;
- (5) Any obligations the deceased had towards an applicant or any beneficiary;
- (6) If the applicant is a child, the child's educational and training needs; and
- (7) If the applicant is the wife or husband:
  - (a) Her/his age and the length of the marriage;
  - (b) The contribution made by the applicant to the welfare of the family of the deceased including that made by looking after the home and family; and
  - (c) What the applicant might reasonably have expected to get if the marriage had ended when it did, but by divorce instead of death.

### **When must an application be brought?**

An application should be brought within one year of the grant of probate or letters of administration of the estate of the deceased, but the court can give permission to bring a late application.

NOTE: An Executor or Administrator must already be appointed before an application can be made under this Act.

## Buying & Selling Land in Guyana

The main laws relating to the purchase and sale of land in Guyana are set out in:

- **The Deeds Registry Act, Cap 5:01 – Land under the Transport system**
- **The Land Registry Act, Cap 5:02 – Land under the Land Registration system**
- **The Civil Law of Guyana Act, Cap 6:01**

### **What do I need to know when buying a property?**

Before you agree to buy a piece of property (land or land with building(s) on it) you must ensure that you know the following:

- the property value or worth. Ensure that you get the property valued by a certified independent valuator, so you know the fair market price to pay for it.
- who is the legal owner of the property? Ensure that you see the original or certified copies of the documents that show who is the legal owner of the property. The legal documents that show ownership of a property are a transport or a certificate of title or lease depending on where the land is located. You can also check at the Deeds Registry or the Land Registry to find out who owns the land. Those registries exist to keep a record of ownership and dealings with land in Guyana.
- that the seller has the right to sell you the property and the power to transfer legal title to you. To be able to transfer legal title to you the seller must be the legal owner, or the executor or administrator of the legal owner, or the legally appointed representative of the owner by way of a valid registered power of attorney.

- The property described in all the documents is the same as the property you want to buy. To ensure this you may need to look at the plan mentioned in the description of the property).
- You will be buying full ownership of the property and not just a share in it (unless that's what you want).
- That the property is not subject to any mortgage or other charge or lease that you have not been told about.

You should physically inspect the property to know:

- (a) what you will be buying; and
- (b) that no one other than the seller is living in it or using it or making any claims to it that may affect you.

You should not pay any money to the seller until you both sign an agreement of sale and purchase in which they promise to sell the property to you and you promise to buy it on the terms set out in the agreement. In Guyana an agreement to sell or buy property cannot be legally enforced unless it is in writing. The seller should give you a receipt for any money you pay to them.

### **The agreement of sale**

An agreement of sale must be in writing and should contain the following information and terms:

Date	the date the agreement is made
Parties	The names and addresses of the seller and buyer.
Property	The description of the property taken from the transport, certificate of title or lease.
Price	the price to be paid for the property
Deposit	It is usual for the buyer to pay 10% of the price as a deposit on the signing of the agreement. It is not advisable to pay the entire purchase price before completion, but you may agree to pay more than 10% if you are getting early possession.

Balance	when the balance of the purchase price is to be paid. Usually it is paid when legal title is being transferred to you, on the passing of the transport or lease, or filing of transfer of lease.
Possession	The date when or circumstances in which the buyer will get physical possession of the property (usually on completion of transfer of title and payment of the purchase price in full) and whether or not it will be vacant possession (vacant possession means that the property is empty or vacant and has no tenants or other occupants).
Expenses	It is usual for the seller and buyer to share the expenses of transferring legal title to the property from one to the other equally, but parties can make any agreement they wish as to who pays what share of the expenses. The expenses comprise duty paid to the government, filing fees paid to the registrar, lawyers' fees and swearing fees. The duty and filing fees are based on the value of the property accepted. The registrar requires a valuation from the Government Valuation Office that certifies the value of the property. The higher the value, the greater the expense. A buyer and/or seller can ask the lawyer and the Registrar to show how the amount she/he is asked to pay has been calculated. At 2023 the rate of duty set by the Government is 2% of the value of the property. The filing fees for transports and certificates of title are calculated differently but they are average 0.5% of the value of the property.
Rates and Taxes	This clause of the agreement gives the date the seller is to stop paying and the buyer is to begin paying rates. Each year a property owner has to pay rates and taxes to the town council or NDC of the area in which the property is located. These are usually paid by the seller up to the date of completion.

Rents	If the property is rented the parties can decide who receives the rents before the transfer of title. Rents are usually received by the seller up to the date of transfer of title unless the buyer is given possession prior to that.
Performance	The agreement should state a time by which title must be transferred by the seller to the buyer. The transfer process for transported lands can by law take two months. The transfer process for registered lands may by law be completed immediately on filing. If the land is transported land the agreement may say that the transaction and transfer must be completed within three months or other agreed time frame, If the seller fails to transfer legal title or the buyer fails to finish paying and accept legal title in that time period the other party may take him/her to court to ask that they complete immediately, or to end the agreement and return any monies paid under it.
Time of the essence	Time is of the essence of this agreement. A time limit (usually 3 or 4 months) is fixed for the completion of the sale by the seller and the purchase by the buyer, and if this clause says that the time frame is an important term of the agreement and the defaulting party can be sued immediately on failing to act as the agreement says.

It is advisable to have a lawyer prepare the agreement of sale. It is mandatory to have a lawyer do the legal documents for transfer of transported land, and advisable to have a lawyer do the documentation for a transfer of registered land. The buyer and seller can each have their own lawyer, or one lawyer may act for both. If they both use the same lawyer and a dispute arises that lawyer should not act for either in a dispute.

If the agreement of sale is not in writing one party will not be able to enforce it against the other unless either there is some written evidence of it signed by the person to be sued (e.g. letters), or there has been

part performance of the agreement by the party suing. Legal advice will be needed on this.

### **After the agreement has been signed**

The parties' lawyers prepare the transfer request and affidavits to be sworn by the buyer and seller and file those documents at the Deeds Registry if its transported land and at the Land Registry if its registered land. The filing fees and the duty must be paid to the Registrar of Deeds or the Registrar of Lands at the time of filing.

If the land is under the deeds/transport system the sale must be advertised in the Official Gazette and creditors and people who object to the sale have 14 days to file a formal objection (called opposing the transport). If no one opposes the sale within 13 days after advertisement the legal title to the property can be passed from the seller to the buyer by way of a deed called a transport or a lease. This passing or transfer of title is done at Transport Court (a special court of the High Court of the Supreme Court of Judicature which is usually presided over by the Registrar of Deeds). Both parties or their attorneys will have to attend Transport Court to sign the transport or lease. The new transport issued in the buyer's name as owner can be collected from the Deeds Registry about 3 weeks later.

If the land is registered land under the Land Registration System there is no advertisement. The transfer is merely registered at the Land Registry and the new document called a Certificate of Title may be issued by the Registrar of Lands immediately, or as soon as the Registry completes the recording process.

Before transport or title is passed the seller has to pay all monies owed to the Government and the council. Compliance certificates must be obtained by the seller (1) from the local authority confirming that rates and taxes have been paid and (2) from the Guyana Revenue Authority confirming that the seller does not owe any taxes. These certificates must be presented to the Deeds Registry or Land Registry before the transport, or lease can be passed or the title transfer registered.

### **If the buyer or seller won't complete the agreement**

If the buyer won't go through with the purchase the seller can keep the deposit and sue for damages for breach of contract to cover any

other expenses or losses that flow from the buyer refusing to keep the promise to buy.

If the seller won't go through with the sale the buyer can sue for specific performance of the agreement. This is a judgment ordering the seller to pass or transfer legal title to the buyer at the agreed price and authorizing the Registrar to do so if the seller refuses.

### **Mortgages**

Many people cannot afford to buy land with their own money and so get a loan for all, or part of, the price using the land as security for payment. In other words, they mortgage the property. The mortgage may be given by the seller but it is usually given by a company like a bank that is in the business of lending money on mortgages.

The procedures for passing a mortgage are very similar to the procedures for passing transport and title described above.

If the mortgagor ("i.e. the buyer /debtor") falls behind with payment of the mortgage instalments the mortgagee ("i.e. the creditor bank") can sue and get judgment for the full balance due, and to collect that sum can have the property sold at execution (i.e. by the court) and be paid out of the proceeds of sale. This is known as a foreclosure.

It is advised that both buyer and seller seek advice from an Attorney-at-Law qualified in this area before entering into an agreement to buy or sell property.

## Prescriptive Title

**A person who has occupied someone else's land (or house and land) for more than 12 years, without the owner's permission, may be able to become the legal owner of that land.**

The law giving this right is the **Title to Land (Prescription and Limitation) Act, Cap 60:02**. You may find that act on Ministry of Legal Affairs website [<https://mola.gov.gy>] under the tab 'Guyana's Laws'.

Getting legal title is not automatic, you must go to the Court to claim the land and convince the Court you are entitled to it. The law setting out how to apply for legal title to the land is set out in:

- *The Rules of the High Court (Declaration of Title) 1923*
- *The Land Registry Act, Cap 5:02*

### **What you must prove to get Prescriptive title:**

You must convince the court that, for a period longer than 12 years:

- you have occupied and controlled the whole piece of land you claim; and
- you have excluded the legal owner from the land; and
- you are not occupying it with the legal owner's permission, as their tenant, family, friend, or otherwise; and
- you have treated the land as your own and done things on it like an owner would; and
- that the owner or anyone passing by could see that you are on the land and treating it like it is yours.

**Note:** Documents showing you occupied the land for more than 12 years may be helpful to your case.

### **Is it Transport or Certificate of Title Land?**

Lands in Guyana are controlled under either the Deeds Registry System or the Land Registry System. People who own land may have an



official document to prove they own it - a Transport or 999-year lease, or a Certificate of Title. Which one they have depends on where the land is. If the land is in a Deeds Registry system area, the owner would have a *Transport or a Lease*. If the land is in a Land Registry system area the owner would be given a *Certificate of Title*. Lands held by Transport or Lease and lands held by Certificate of Title can be claimed by prescription but the ways and rules of applying for them are different.

**How to apply for Lands held by Transport:**

- Title to Land (Prescription and Limitation) Act Cap.60:02
- The Rules of the High Court (Declaration of Title) 1923

If the land you are claiming is land owned by a transport, or by a Lease then with a lawyers help, you must:

- file a document called a 'petition' at the High Court. In the petition you set out your history in relation to the land, including how you got onto the land and all the things you have done that entitle you to claim it by prescription.
- get affidavits from people in the area confirming that you have been in open occupation for more than 12 years.
- attach a plan showing the boundaries of the land and what you have on it (an occupational survey).
- attach any documents that show you have been occupying the land for a long time.

**What happens next:**

You must:

- give copies of your petition to the legal owner of the land, to all occupiers of the land, and to all the owners and occupiers of the neighbouring lands (this is called service).
- You must also publish a notice that you are applying for the land. That notice must appear in both the Official Gazette (the government newspaper) and another popular newspaper three Saturdays in a row. This is to allow the neighbours to ensure that you aren't claiming portions of their land, and for the legal owner to know you are claiming their land and to come to court to defend their ownership.
- If the owner wishes to defend their title they may file an 'opposition' in which they set out their story about how you

came to be on the land and why you should not be given legal title to it.

**The Court Hearing:**

Your application will likely be heard at Land Court by a Commissioner of Title who is by law the Judge of the Land Court of the Supreme Court of Judicature. You will attend court and tell your story to the Judge. The Judge will listen to you, read your story set out in your petition, look at the documents you have presented that help show you have been occupying the land for more than 12 years and treating it like it was your own. The Judge may visit the land to see for herself how you occupy it. If the Judge is satisfied that it is more likely than not that you have been in sole open possession of the land for more than 12 years without the owner's consent or agreement, she may order that you get legal title to it.

If the owner has objected and filed an opposition the Judge will also listen to the owner's story before deciding. It is the Judge's job to determine the truth. The Judge in coming to a decision whether you have occupied openly without consent for more than 12 years must look at both parties, assess whether they are telling the truth and assess the evidence and documents they have handed to the court.

If the Judge orders that you get legal title to the land, you may then use that court order to apply to the Registrar of Deeds for a Transport or a Lease (the official document that says who owns the land) in your name.

**How to apply for lands held by Certificate of Title:**

- Title to Land (Prescription and Limitation) Act Cap. 60:02
- The Land Registry Act Cap. 5:02

If the land you are claiming is held by a Certificate of Title you must:

- file an application and an affidavit at the Land Registry. In the affidavit you set out your history in relation to the land, including how you got onto the land and all the things you have done that entitle you to claim it by prescription.
- you must also get affidavits from people in the area confirming that you have been visibly and openly in occupation for more than 12 years.

- with the application you attach a plan showing the boundaries of the land and what you have on it (an occupational survey); and
- attach any documents that show you have been occupying the land for a long time.

**What happens next:**

Your application will be heard at Land Court by a Commissioner of Title who is by law the Judge of the Land Court of the Supreme Court of Judicature. You will attend court and tell your story to the Judge. The Judge will listen to you, read your story set out in your application, look at the documents you have presented that help show you have been occupying the land for more than 12 years and treating it like it was your own. The Judge may visit the land to see for herself how you occupy it.

If the Judge believes that you have been in sole open possession of the land for more than 12 years without the owner's consent or agreement, she will do two things.

First, she will order that you publish a notice that you are applying for the land. That notice must appear in one Saturday issue of both the Official Gazette (the government newspaper) and another popular newspaper. Second, she will order that you give copies (this is called service) of your application to the legal owner of the land, all occupiers of the land, and all the owners and occupiers of the neighbouring lands. This is to allow other people who may be on the land with you and the neighbours to ensure that you aren't claiming portions of their land, and for the legal owner to know you are claiming their land and to come to court to defend their ownership. You must wait one full year after the publication for the application to be heard.

If the owner wishes to defend their title they may file an objection and attach proof of their ownership. If the legal owner objects and proves to the Judge that they have a Certificate of Title to the land you claim the Judge *must* dismiss your application. Your application must be dismissed even if it is true that you have occupied and used the land as if it were yours for more than 12 years.

If the owner does not appear and object, *and* if you prove to the Judge that you have occupied the land openly without consent for more than 12 years, then the Judge may order that you get legal title to the land.

If the Judge orders that you get legal title to the land, you must publish a notice of that order in the newspaper. If no one contests that order within 28 days then the Land Court will give you a stamped court order directing the Registrar of Lands to record you as the legal owner. You may then apply to the Land Registry for a Certificate of Title naming you the legal owner – the Registered Proprietor.

# Who is a landlord & who is a tenant?

The law relating to Landlord and Tenant is set out in:

- **The Landlord and Tenant Act, Cap 61:02** (hereinafter referred to as “LLTA”)
- **The Rent Restriction Act, Cap 36:23** (hereinafter referred to as “RRA”)

## Who is a landlord and who is a tenant?

A landlord is the person entitled to receive the rent for a property from the tenant.

A tenant is the person entitled to have possession of the property under the agreement with the landlord.

Rent is the sum of money paid by the tenant to the landlord in exchange for possession of the property.

A tenancy is a legal arrangement giving you the right to have exclusive possession of someone else's property for a set period in exchange for paying rent.

## How do I know if I am a tenant?

You are a tenant if you live in a property or part of a property owned by someone else, and have exclusive possession of the part you live in (meaning you don't share it with the landlord), and you have a set term or time period for you to live there, and in return for living there you pay the landlord a sum of money which is called rent.

Exclusive possession is the right to keep all others out of the property, including your landlord. A set term refers to the time period you and the landlord have agreed that you will live there. It can be a single period of time ending on a fixed set date, for example 5 years (a fixed lease), or on a weekly, monthly or yearly basis (a periodic tenancy) which continues until either you or the landlord decide you no longer wish it to continue and give notice to the other (notice to quit).

If you do not have exclusive possession, for a set term, in return for paying rent, you are likely not a tenant, but a licensee. A licensee is someone who occupies a property with the permission of the owner, not under an agreement, or paying rent, but at the owners will, for as long as the owner wishes to let them.

The most important difference between a tenancy and a license is that the law does not give a licensee the same protection it gives to tenants. It is much easier for an owner to evict a licensee recover possession of her/his property from a licensee than from a tenant.

Note: Even if your landlord says you are a licensee you may in fact be a tenant. If you are in any doubt as to whether you are a tenant or a licensee, get legal advice.

### **Should my agreement be in writing?**

A tenancy is a legal arrangement giving you the right to have exclusive possession of someone else's property for a set period in exchange for paying rent.

A tenancy can be made orally (by word of mouth) or in writing. The legal document is often called a "Tenancy Agreement" or "Lease". The word "lease" usually refers to a written agreement between a landlord and tenant for a fixed number of years.

A written agreement between you and the landlord will include a description of you and the landlord (name, address, occupation), a description of the property, the term or time period of your right to possess it, the amount of rent you are to pay for it, the time you must pay the rent, any other thing that either you or the landlord must do, including who must pay for the electricity and water supplied to the property. It is best to have a written agreement so that no one forgets what they are supposed to do, and so that if there is a dispute there is evidence of what you both agreed to.

If your possession/rental period is for more than 3 years the law says it must be by deed and it must be registered. A lease for more than 3 years must be by deed. A deed is a formal document, which must be signed by both the landlord and tenant, in the presence of a notary public, and must be registered in the Deeds Registry.

**Rights and obligations of a Tenant:**

- You should have exclusive possession of the property. The landlord must give you possession and you have the right to exclude your landlord and whomever you don't invite from the property you rent.
- You have the right to quiet and peaceful enjoyment of the property, that is the landlord must refrain from actions that disturb and interrupt your use of the property, or actions that make the property less fit for your use. (section 60 LLTA)
- You have the obligation to pay the full amount of the rent on time whenever it is due.
- You have the right to receive a receipt from the landlord acknowledging payment of any rent (section 58 LLTA)
- You have the obligation to take care of the property and not damage or alter it.

**Rights and obligations of the Landlord**

- The landlord must rent you a property fit for human habitation. (section 44 LLTA)
- The landlord must keep the property in repair throughout the tenancy. (section 44 LLTA). If you have a lease for more than 3 years it may be your duty to keep the property in repair.
- The landlord must not interrupt nor disturb your peaceful enjoyment of the property.
- The landlord has a right to receive their rents from you on time and in full.
- The landlord has the duty to give you a receipt for any rent you pay. (section 58 LLTA)
- The landlord has a right to access the property to execute repairs.
- The landlord or her/his agent can enter the property to inspect its condition but must first give you 24 hours' notice in writing of her/his intention to do so. (section 44(2) LLTA).

### Repairs

You have a duty to care for the property and not willfully damage or foul it. The landlord is legally obliged to make sure that the property is in repair and in all respects reasonably fit to live in at the start of and during the tenancy. Some leases for more than 3 years may direct that the tenant is responsible for repairs to keep the property reasonably fit to live in.

If the landlord fails to keep the property in repair and you do not owe them any rent, you can (s. 15 RRA):

- send her/him a notice by registered post setting out the repairs that need to be done and their estimated cost and requesting that they be done within 30 days of receipt of the notice; and
- if the landlord fails to do the repairs within 30 days, do them yourself and deduct the cost from the rent.

In addition, if your health or the health of someone living with you is affected because the landlord has failed to keep the premises in good and tenantable repair you may be able to sue the landlord for compensation for any damage you suffer.

### Security of tenure

The term security of tenure means the legal protection that the tenant receives against attempts by landlord to wrongfully remove the tenant from the property. You have a right to possession for the term of the tenancy as long as you pay the rent. Unless you leave the property of your own free will the landlord cannot get possession of the property from you unless and until:

- You have a fixed term tenancy and the term has come to an end; or
- You have a periodic tenancy (weekly, monthly, yearly) and the landlord sends you a notice to quit demanding that you remove at the end of the next period; and
- the landlord applies to the court for an order of possession against you.



**Getting a possession order**

The court can make a possession order against you if:

1. If you have not paid the rent, and refuse to pay;
2. you have broken any other obligation to the landlord, and refuse to perform it;
3. If you or someone living with you has caused a nuisance or annoyance to neighbours or other tenants;
4. If you have been convicted of using the property for illegal or immoral purposes;
5. You have allowed the property to deteriorate (apart from fair wear and tear);
6. If you have given notice to quit (but later changed your mind) and as a result the landlord has agreed to sell or let the property to someone else;
7. If the landlord requires the property as a home for or for use by herself/himself or for work purposes;
8. If the landlord reasonably requires the property for use as a home by any member of her/his family or someone who works full time for her/him;
9. The court must be satisfied that reasonable alternative accommodation is available to you. Other accommodation will be suitable if:
  - a. you will have the same or similar security of tenure (period to stay); and
  - b. it is reasonably suitable to your means and needs as regards rent, size and nearness to your workplace.
10. If the property or part of it has been compulsorily acquired or is needed for public purposes;
11. If the property is legally required to be knocked down;
12. If the property is required for repairs, improvement or rebuilding. The court must be satisfied that greater hardship would be caused by refusing to grant the order. Among the matters the court must take into account in deciding this is whether or not other accommodation is available for you;

13. If your tenancy was conditional upon your being an employee of the landlord and your employment has ended;
14. If the property was let to you because you were employed by the landlord and you are no longer so employed or you have been offered alternative accommodation.

Further, even if the landlord has one or more of the above grounds the court can only make an order if it thinks it is reasonable to do so. The court can postpone the hearing of an application for possession and the coming into effect of a possession order. It can also order the landlord to pay compensation to a tenant who will suffer loss or damage as a result of an order being made.

A tenant can appeal against a possession order to the Full Court of the High Court of the Supreme Court of Judicature and from there to the Court of Appeal. If the landlord sells the property this will not affect your rights as a tenant. The new owner will become your landlord and will have the same obligations to you as the previous owner.

### **Protection from harassment and the threat of eviction**

The law protects you in case the landlord tries to take a short cut to possession by harassing you into leaving or evicting you without a court order or threatening to do so.

1. If the landlord or anyone on her/his behalf harasses you by doing anything to interfere with your peaceful enjoyment of the property you can sue her/him for an order to stop the harassment and damages. Examples of harassment are threats and abuse; frequently cutting off water or electricity; changing the locks.
2. If the landlord removes the roof, windows, door or any other part of the property without your consent and otherwise than in the process of doing repairs she/he will be guilty of a criminal offence. (sections 60, 61 LLTA)
3. If your landlord throws you out of the property without a possession order or tries to do so she/he will be guilty of a criminal offence and you can sue her/him for an order to let you back into the property or to stop trying to evict you and for damages.

### **If I die what happens to people living with me?**

If you die the tenancy will automatically pass (in the following order) to: (section 2 RRA)

- your widow/widower if she/he is living with you in the property when you die, or
- your reputed wife/husband if she/he has been living with you in the property for at least 6 months when you die, or
- a member of your family or household who is living with you when you die (if there is a dispute as to who should become the tenant a magistrate can be asked to decide), or
- a dependent who has been living with you for at least 6 months when you die.

### **Rent**

Initial Rent (sections 5,6 RRA)

The amount of rent a landlord may charge for a property should be assessed and fixed by a magistrate (section 5 RRA). The law says a landlord must apply for this assessment and if they do not, you can apply for assessment. (section 6 RRA)

**Note:** As at 2023 it is not possible to get a rent assessed as there is no magistrate carrying out rent assessments. How much rent you pay at the beginning of the tenancy is usually the amount agreed to by the landlord and tenant.

### **Premiums (section 20 RRA)**

It is illegal for a landlord to ask for any money in addition to the rent as a condition of renting property to you, or renewing the rental agreement. If you do pay anything extra (called a premium) you can get it back from the landlord.

### **Rent Receipts (section 58 LLTA)**

The landlord has the duty to give you a receipt for any rent you pay.

If the landlord refuses to accept a payment of rent, buy a money order to the value of the rent and send it to the landlord by registered post.

**Do I have to pay increases in rent? (sections 14, 15 RRA)**

The landlord should not increase the rent without your agreement or without a magistrate assessing what rent should be paid for that particular property. Rent increases are usually allowed where there is an increase in rates and taxes on the property paid by the landlord, or the landlord has improved the property making it more valuable. Otherwise, an increase may only be imposed with the approval of a rent assessment magistrate.

If the landlord has demanded an increase in rent and you have paid it you can recover the increase paid during the last 12 months. This is so even if you agreed to the increase. You can get your money back by deducting it from the rent.

**Can I sub-let? (section 29 RRA)**

You cannot sub-let all or part of the property without the written consent of the landlord. But if the landlord unreasonably refuses to allow you to sub-let you can apply to the Magistrates' Court for permission to do so.

If you sub-let, you will be the sub-tenant's landlord and she/he will have the same rights against you as you have against your landlord.

# Hire Purchase

The laws governing Hire Purchase can be found in the Hire Purchase Act 2022.

## What is hire purchase?

Hire purchase is the most common method of obtaining goods without paying for them in full at one time. It is the method of paying for something by installments. People generally buy “on H.P.” when they don’t want or can’t afford to buy something outright.

## When you buy on hire purchase:

1. You pay for the goods gradually after you have taken possession of them.
2. You normally have to put down a deposit first.
3. You will end up paying more for the goods than if you had bought them outright.
4. If you don’t keep up the payments the goods can be taken back by the seller.
5. You will not actually own the goods until you’ve paid the last installment.

## The hire purchase agreement

When you buy something on hire purchase you will have to sign a hire purchase agreement with the seller. This will set out what you have to do in order for the goods to become yours and you should read it carefully, especially the small print.

If you don’t fully understand everything the hire purchase agreement says, get someone (but not the seller or anyone who works for her/him) to explain it to you BEFORE you sign it.

Sellers of goods on hire purchase usually have standard forms of agreement so you will probably have little choice but to sign the agreement and get the goods or do without the goods. But if you do decide to go ahead you should know what you’re getting into as you could end up out of pocket.

The seller will probably require you to give some security (e.g. a transport to land) or provide one or more guarantors. Again, you will have little choice but to do as required or go without the goods.

**Your obligations**

Once you have signed a hire purchase agreement you must:

- (a) take delivery of the goods from the seller;
- (b) take reasonable care of the goods;
- (c) not try to sell the goods (remember they will not belong to you until you have made the last payment) or do anything with them that is not allowed by the seller;
- (d) pay the installments when due; and
- (e) return the goods to the seller if the agreement comes to an end before the goods have become yours.
- (f) keep the goods in your own custody and possession in Guyana.
- (g) notify the seller of any change in address.
- (h) use the goods for the purpose for which they were intended.

**If you don't keep up with your payments**

The agreement will almost certainly say that if you fail to make any payment when it is due the seller may:

- (a) end the agreement;
- (b) take back the goods;
- (c) forfeit (that is keep) the payments that you have already made; and either
- (d) if the agreement contains what is called a minimum payments clause, make you pay the difference between what you have paid and the minimum payment set out in the agreement. E.g. if the minimum payment set out in the agreement is \$6,000.00 and you have only paid \$2,000.00 you will have to pay the seller a further \$4,000.00; or
- (e) claim damages from you if she/he is out of pocket.

**The seller's obligations**

The seller has the following obligations to you:

- (a) to deliver the goods to you;
- (b) to refund all money paid by you if it turns out she/he is not the owner of the goods;
- (c) to allow you to have possession and use of the goods without any interference; and
- (d) to take back the goods and refund all money paid by you if the goods are not what they were described to you as being or are not fit for the purpose for which she/he knows you want them. E.g. if you make a hire purchase agreement for a red 3-

piece suite, or a red 2-piece suite. And as a suite is obviously needed for sitting on, it mustn't collapse as soon as anyone sits on it.

Note however that the seller may have put a term in the agreement excusing her/him from any or all of her/him obligations to you. It is possible that in some cases she/he may not be able to rely on this term. You should get advice if you have any complaints about the goods, no matter what the agreement says or the seller tells you.

The Hire Purchase Act 2022 informs persons of the requirements in the that hire purchase agreements should have in order to be enforced:

- it gives the hirer a right to determine the agreement,
- voids any unfair terms in the agreement
- Places a duty on the seller to provide specific documents and info to the hirer
- Places a duty on the hirer or buyer to give information as to the location of the goods upon request by the owner or seller
- Allows for conditions and warranties to be implied in the agreements
- Makes provisions for a notice of cancellation of the agreements
- Makes provisions for the registration of hire-purchase, conditional sale or credit sale agreements
- Makes provisions for the repossession of goods by the owner or seller and other remedies

For example: the supplier may bring an action to enforce his right to possession (he can't simply repossess the goods on a whim)

Also, the Act applies retroactively as it relates to recovery of possession of goods and appropriation of payments.

**Remember:**

1. Read the agreement carefully and make sure you understand it before you sign. If in doubt seek advice.
2. If you fail to pay just one installment the goods may be taken from you even though you have already paid nearly all the installments.
3. It is illegal for a seller to discriminate against you on the grounds of gender, e.g. if you are a woman by requiring you to get a male guarantor.



# Guarantees

## What is a Guarantee?

A guarantee is a kind of contract that is an agreement which is legally binding and which can be enforced in the courts. It is a promise to make good the failure of someone else to do what she/he has promised to do. Another word for guarantor is surety.

For example - where in return for C lending D \$1,000.00, G agrees that if D does not repay C, she/he (G) will repay C. In this case C is the creditor, D the debtor and G the guarantor.

Another example of a guarantee, and one which is common in Guyana, is where, in return for company C sending employee D to study abroad, G promises that if D fails either to return and work for C for the agreed length of time or to repay the money spent by C on D's studies, she/he (G) will repay the money.

## Does a guarantee have to be in a special form?

No, but it cannot be enforced in the courts unless there is something in writing containing the main terms of the agreement and signed by the person against whom it is to be enforced.

## The liability of the guarantor

A guarantor will only have to pay the creditor if the debtor fails to keep her/his promise to the creditor. The amount the guarantor will have to pay is limited to the amount agreed with the creditor.

**Note:** You may have to pay interest on the agreed amount if this is included in the guarantee agreement.

The creditor does not have to try to recover from the debtor before enforcing the guarantee against the guarantor. It is enough that the debtor is in default.

Where there are several guarantors, the creditor can recover in full against any one of them. None of them can refuse to pay because the others have not been asked to do so. However, having paid the creditor in full that guarantor can recover contributions from the others. For example, if A, B and C are guarantors for \$12,000.00 and A pays the whole amount she/he is entitled to \$4,000.00 each from B and C.

**The rights of a Guarantor:****Against the debtor**

1. As soon as the time for the debtor to pay the creditor has arrived the guarantor can require the debtor to make payment.
2. A guarantor who has paid the creditor can recover from the debtor all money properly paid under the guarantee.

**Against the creditor**

Once the guarantor has paid the creditor, she/he is entitled to be placed in the same position the creditor was in as regards the debtor. For example: if the creditor has obtained judgment against the debtor, she/he must assign it (that is, pass the right to recover under it) to the guarantor.

***Against co-guarantors***

As stated above, a guarantor who has paid more than her/his share under the guarantee is entitled to contributions from the other guarantors.

***Discharge of a guarantor***

A guarantor who has paid in full under the guarantee will obviously be discharged (freed) from all further liability. A guarantor will be released from liability without having to pay anything if:

- (1) a legally enforceable agreement for the guarantor to be released is made between the creditor and the guarantor;
- (2) the creditor alters the terms of the contract with the debtor without the agreement of the guarantor. For example, if G guarantees a loan to D of \$10,000.00 and C and D later agree to increase the loan to \$20,000.00 without G's agreement, G will be discharged;
- (3) generally speaking, the creditor legally binds her/himself to give the debtor more time to pay;
- (4) the creditor gives up any security which has been given by the debtor or takes a new security in place of the original one. For example, if D left a car with C as security, G would be discharged if C gave the car back to D before payment was made or exchanged the car for D's motorcycle; or
- (5) the debtor is released from the debt by the creditor.

**WARNING**

IF YOU AGREE TO STAND AS A GUARANTOR, YOU MAY LOSE SOME OR EVEN ALL OF YOUR PROPERTY AND BE UNABLE TO RECOVER ANYTHING FROM THE PERSON YOU HAVE GUARANTEED.

YOU SHOULD THEREFORE VERY CAREFULLY CONSIDER ANY REQUEST TO BECOME A GUARANTOR AND MAKE SURE THAT IF YOU DO AGREE TO BECOME ONE, YOU FULLY UNDERSTAND THE TERMS OF THE GUARANTEE BEFORE SIGNING IT. IF IN ANY DOUBT SEEK LEGAL ADVICE IMMEDIATELY.

# Powers of Attorney

## What is a Power of Attorney?

A power of attorney is legal authority to act for another person. The document by which such authority is given is called a power of attorney. The giver of a power of attorney is called the principal and the person to whom it is given is called the attorney, or the empowered or duly constituted attorney.

## Types of power of attorney

There are four types of power of attorney:

1. General Power of Attorney by which the attorney can do everything possible for the principal.
2. Limited Power of Attorney by which the attorney can only do those things for the principal, which are clearly set out in the power.
3. Special Power of Attorney by which the attorney is authorized to perform one special act for the principal.
4. Irrevocable Power of Attorney, which are of two kinds:
  - (a) for value; and
  - (b) whether for value or not, for a fixed period of time.The seller may give an irrevocable power of attorney for value to the buyer of a property.

## Requirements for a valid power of attorney

The Deeds Registry (Amendment) Act No. 3 of 2022 and the Power of Attorney (Amendment) Act No. 2 of 2022 states for a Power of Attorney to be registered with the Deeds Registry it must be accompanied by the following:

- i. 2 (two) copies of valid of Identification (drivers' license, passport or National Identification may suffice) of both the Donor Donee (if it is a passport, the bio-data page must be used). The photographs of the identification documents must be clear and in colour and certified, signed and sealed or stamped by the Public Notary or Magistrate as true copies of the original documents of the done and donor.
- ii. Both the Donor and Donees must sign the Power of attorney along with 2 witnesses if executed in a non-commonwealth country, e.g United States of America.
- iii. If the Donor resides overseas that person MUST appear before a Notary Public in the jurisdiction in which he/she

resides and the Donee Must appear before the Notary Public in the jurisdiction in which he/she resides (therefore the Power Attorney notarise will bear the signature of 2 Notaries)

- iv. The power of Attorney must be filed with 2 Affidavit of Attesting Witnesses signed by the witnesses of the Power of Attorney.
- v. All powers of attorney must be registered in the Deeds Registry.

N.B: The execution to take place before an officer of a Guyana consulate or embassy.

### **Revoking a power of attorney**

General and limited powers of attorney may be revoked (i.e. cancelled) at any time the principal likes.

The revocation must be in writing and filed in the Deeds Registry. A certified copy of the revocation must be served on the attorney warning her/him of the date on which she/he will no longer have the power to act for the principal.

Irrevocable powers of attorney can only be revoked by:

- (a) agreement between the principal and attorney; or
- (b) death (though a power may be stated to be valid for a specified period after death), disability (e.g., insanity) or bankruptcy of the principal.

### **Renunciation of a power of attorney**

An attorney who changes her/his mind about acting for the principal may renounce the appointment.

The renunciation must be in writing and filed in the Deeds Registry. A certified copy must be served upon the principal.

### **Duties of attorney**

1. An attorney must not make a secret profit for her/himself out of acting for the principal although she/he may take expenses.
2. An attorney must account to the principal for all money received and paid out on the principal's behalf.

This is an example of a limited power of attorney:

GUYANA  
COUNTY OF DEMERARA

LIMITED POWER OF ATTORNEY

Be it known that on this 2<sup>nd</sup> day of March 2022, Before me, Indera Singh, Notary Public practicing in the City of Oldtown, County of Demerara, Republic of Guyana, personally came and appeared Simon Small of 67, Seventh Street, Oldtown, Demerara (hereinafter called the appearer), which appearer stated and declared that he had made, nominated and appointed and by these presents doth make nominate and constitute and appoint Denise Fung of 45 Ninth Street, Oldtown, Demerara, (hereinafter called the attorney) to be the true and lawful attorney of the appearer and on his behalf to do and execute the following acts deeds and things:

1. To let the appearer's property at 12 Third Street, Oldtown,
2. To collect all rents from the tenants of the said premises and to do all such acts and things as are necessary to recover arrears of rent in respect of the said premises.
3. To give notice to quit to any tenant of the said premises and to do all such acts and things as are necessary to recover possession of the said premises from any tenant.
4. Generally, to do all such acts and things in connection with the letting of the said premises that the attorney shall think fit.

And the appearer declared and agreed to ratify, allow and confirm all and whatever the attorney shall or may lawfully do or cause to be done in and about the premises under and by virtue of these presents. Thus, done and passed in the City of Oldtown, County of Demerara, Republic of Guyana on the day and year first above written in the presence of the subscribing witnesses.

.....  
Simon Small  
GY ID #: 123456678  
GY PP# R123455

.....  
Denise Fung  
GY ID #: 456678123  
GY PP# R455123

Witnesses

1. Steven Jones
2. Samatha Small

AND IN MY PRESENCE  
QUOS ATTESTER  
NOTARY PUBLIC

## The Labour Act, Cap 98:01

- If an employer pays an employee lower than the **National prescribed minimum wage**, that employer upon being convicted shall be liable to pay a ***fine*** of \$15,625.00 (fifteen thousand, six hundred and twenty-five dollars) and on a second or subsequent conviction, to a fine of \$46,875.00 (forty-six thousand, eight hundred and seventy-five dollars).

Where rates of wages are not prescribed in any occupation, the employer shall pay wages to the worker at an agreed rate

Payment of wages should be made in ***money only*** and shall be made on ***working days only*** and at or near the workplace, except where there exist more appropriate arrangements.

- An employer can make ***lawful deductions*** from a worker's wages for:
  - a. Unpaid rent
  - b. Grazing fee
  - c. Actual or estimated costs of tools or materials provided by the employer at the request of the worker to be used by him in his occupation
  - d. Food or provision or goods supplied by the employer at the employee's request
  - e. Money advanced

In addition, the employer can also make statutory deductions of NIS and PAYE or agreed deductions.

### Entitlement

Persons entitled to make a complaint of unpaid wages to the Ministry of Labour are persons viewed as workers. There must be a fixed wage, fixed working hours and the worker must be under the control of the employer.



***The Minimum Wage Order (made under the Labour Act)***

- The ***minimum rate of wages*** payable to an employed person shall not be less than \$347 per hour or \$2,676 per day or \$13,880 per week, or \$60,147 per month, as the case may be.
- The normal work week shall be 40 hours which shall not exceed 5 days per week and any hours of work which exceed the minimum shall be paid at overtime. The normal overtime rate is at time and a half the ordinary rate.

The ***Labour (Conditions of Employment of Certain Workers) Act*** provides for the payment of one and a half times the ordinary wages to employees of restaurants, cook shops, parlours, snackettes, hotels, taverns, liquor restaurants, discotheques, night clubs and rental spirit shops for all hours worked on all Sundays and on all public holidays.

Under the ***Factories Act***, workers employed in factory locations are to be paid double their normal rates of pay for working on Sundays and the following public holidays:

- Labour Day
- Good Friday
- Easter Monday
- Christmas
- Phagwah
- Eid-UI-Adha

# Discrimination

## What is discrimination

Discrimination can occur where a person makes “any distinction, exclusion or preference in relation to another person with the intention of nullifying or impairing equality of opportunity of treatment in any employment or occupation.”

The grounds of discrimination that a person can raise are on the basis of:

(a) “race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, economic status, political opinion, disability, family responsibilities, pregnancy, marital status or age except for the purposes of retirement and restrictions on work and employment of minors.”

(b) conduct amounting to discrimination can be direct or indirect, intentional or unintentional. What is important is the identification of the act or omission that amounts to discrimination.

## To whom does the law apply?

The law applies to employees and employers in the public and private sectors. It applies to employers generally, professional partnerships, professional or trade organizations, qualifying bodies, vocational training bodies, and employment agencies.

## Who may make a complaint?

While the Chief Labour Officer (or her/his designated officer) is authorized to prosecute the cases, she/he bases the case on the allegations made by the victim of the discriminatory conduct. Therefore, the victim must make a complaint to the Chief Labour Officer or the designated officer at the Ministry of Labour. An investigation should be conducted and statements taken from potential witnesses. The employer or agency that is accused of the discriminatory conduct should be interviewed and a statement taken from the proper officer of the employer.

Victims can also institute private criminal charges. In this case the complaint's lawyer would be responsible for conducting the case in court.

## To which court is a complaint made?

A complaint is made to the Magistrates' Court of the district in which the alleged discrimination occurred. The cases are therefore summary

in nature and makes discrimination and matters related to discrimination, criminal offences.

Changes must be made within six months of the alleged discrimination. The victim either personally through lawyer or through the Chief Labour Officer has to establish a sufficient case of discrimination or an offence related to discrimination. Once this is done the burden shifts to the employer or agency to disprove the allegations. There are a number of exceptions to discrimination which can be claimed by an employer or agency under the law and an employer would have to prove that.

### **Protection from discrimination**

It is unlawful for an employer to discriminate in relation to recruitment, selection, or employment of any person for the purposes of training, apprenticeship or employment.

### **There shall be no discrimination:**

- (a) In the advertisement of jobs;
- (b) In the arrangements made for the purpose of determining who should be offered employment;
- (c) In determining who should be offered employment;
- (d) In terms or conditions on which employment is offered; and
- (e) In the creation, classification or abolition of jobs.

Further it shall be unlawful for an employer to discriminate against an employee:

- (a) In terms or conditions of employment;
- (b) In conditions of work or occupational safety and health measures;
- (c) In the provision of facilities related to or connected with employment;
- (d) By denying access, or limiting access to opportunities for advancement, promotion, transfer, or training, or to any other benefits, facilities or services associated with employment;
- (e) By retrenching or dismissing an employee;
- (f) By subjecting the employee to any other disadvantage.

### **Genuine occupational qualification**

However, it shall not amount to discrimination if the job requires a “genuine occupational qualification” which includes circumstances where:

- (a) The job calls for a person with the same particulars or characteristics that would otherwise be considered discriminatory;
- (b) A religious institution may require a person of a particular religious affiliation;
- (c) The job may require a person of a particular sex in order to preserve decency or privacy e.g. where it may involve physical contact with persons of the same sex and persons may object to the presence of a person of the opposite sex because they are in a state of undress, or use the same sanitary facilities;
- (d) The nature of the location of the establishment makes it impracticable for the holder of the job to live elsewhere than on the premises provided by the employer where such premises are occupied or normally occupied by persons of the same sex and are not qualified for accommodation of both sexes;
- (e) The job requires a married couple;
- (f) The nature of the establishment or part of it requires the job to be held by a person of a particular sex e.g. it is part of a hospital, prison or other special facility;
- (g) The holder of the job provides individuals with personal services promoting their health, welfare or education, and those services can be best provided by a person of a particular sex;
- (h) A disability is a relevant consideration in relation to the particular requirements of the employment concerned where the performance of the job could not be carried out as a result of the disability and special facilities are required to accommodate the disabled person which the employer cannot reasonably be expected to provide.

**Professional partnerships**

It is unlawful for professional partnerships either formed or to be formed consisting of 6 or more persons in a firm, to discriminate against persons in determining who should be offered a position as a partner or by expelling persons from the firm or subjecting persons in the firm to unfair treatment. A firm can raise a defence of genuine occupational qualification in relation to any allegation of discrimination.

**Professional or trade organisations**

These organizations shall not discriminate against any person:

- (a) In relation to a person's application for membership or the terms on which it would accept or continue to have a person as a member;
- (b) By denying, limiting or deliberately omitting to afford a member access to any benefits, facilities or services provided;
- (c) By limiting or depriving a member of access to or acquisition of leadership positions;
- (d) By subjecting a member to unfair treatment.

**Note:** The law does not state what constitutes unfair treatment.

**Qualifying bodies**

It is unlawful for these bodies, which include educational authorities, to discriminate:

- (a) In conferring, renewing or extending any authorization or qualification;
- (b) In the terms or conditions for conferring, renewing or extending any authorization or qualification;
- (c) By revoking, withdrawing or varying the terms and conditions of any authorization or qualification. "Authorisation or qualification" includes recognition, registration, enrolment, approval and certification of any qualification.

**Vocational training bodies**

These refer to:

1. Employers' associations which are designed to provide training for their employees; and
2. Any person or educational authority that provides facilities for training for employment.

**They shall not discriminate:**

- (a) In the arrangements for determining who shall be offered training;
- (b) In the terms and conditions regarding who shall access training courses or other facilities or services, including vocational counseling and guidance;
- (c) By refusing or deliberately omitting to afford access to training courses or other facilities and services vocational, counseling and guidance;
- (d) By terminating any training which has already started.

However, it shall not be unlawful to give preference to nationals over non-nationals.

**Employment agencies**

Employment agencies shall not discriminate:

- (a) By refusing to provide a person with any of its services;
- (b) The terms on which it provides its service;
- (c) In the manner in which it provides its services;
- (d) In any manner in which it facilitates the hire or employment of any person.

However, an employment agency would not be liable if:

- (a) The discrimination concerns employment which the employer could lawfully refuse to offer that person; or
  - (ii) It had reasonable grounds for relying on information supplied by the employer.

**Protection from discrimination in other areas**

There is also protection against discrimination:

- (a) In relation to the provision of goods, services, and facilities;
- (b) In relation to subterfuge i.e. a requirement or condition that does not apparently contravene the law but which when looked at closely does have the effect of giving preference to a person that would amount to discrimination;
- (c) In advertisements. However, a publisher would not be liable if he/she had reasonable grounds for relying on information supplied the customer who placed the advertisement;
- (d) In the formatting of application forms which would require information that would amount to discrimination.

**Other measures**

Employers can introduce affirmative action or special measures of a temporary nature to promote equality of opportunity in employment based on the grounds that may otherwise amount to discriminatory conduct. These measures would not be deemed to be unlawful discrimination.

**Sexual Harassment**

Any act of sexual harassment against an employee committed by an employer, managerial employee or co-worker shall constitute unlawful discrimination based on sex and is therefore a discrimination offence. It should be noted that sexual harassment means “unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile environment for the employee.”

**Equal remuneration**

Employers shall be obligated to pay equal remuneration to men and women performing work of equal value for such employer. "Equal remuneration" means "rates of remuneration that have been established without differentiation based on the grounds of sex." "Work of equal value" means equal in value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of work." This means that the employer should pay equal remuneration to workers even where they may be performing dissimilar jobs but which jobs are nevertheless of equal value.

Persons who are performing similar jobs should be paid equal remuneration. This is also covered in the Equal Rights Act, 1990 which states that "women and men shall be paid equal remuneration for the same work or work of the same nature."

The burden of proving that equal remuneration has been paid to an employee is on the employer.

**General exceptions**

The law does not affect:

- (a) Charities for which deeds, wills or other documents confer charitable benefits on grounds that would otherwise be discriminatory or for which acts have been done to give effect to the provisions of such deeds, wills or other documents;
- (b) Religious bodies in relation to:
  - (i) the ordination of priests, ministers of religion or members;
  - (ii) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
  - (iii) the selection or appointment of persons to perform duties and functions in any religious observance or practice; or
  - (iv) any acts or practices that conform to the doctrines or beliefs of the religion.

**Offences and Penalties**

- (a) In relation to employment agencies and advertisements any person who knowingly or recklessly makes a statement which is false or misleading in a material respect or particular commits an offence. The penalty is a fine.

- (b) It is an offence to pressure another to discriminate by inducing or attempting to induce them to do so; or by providing or offering to provide the person with any benefit; or by subjecting or threatening to subject the person to any detriment. Any offer or threat made can be made directly or indirectly to another. The penalty is a fine.
- (c) It is an offence to victimize a person on the ground that the other person:
  - (i) has made, or proposes to make, had brought or proposes to bring legal proceedings against any other person;
  - (ii) has furnished or proposes to furnish any information, or has produced or proposes to produce any documents to a person exercising or performing any function under the law;
  - (iii) has attended or proposes to attend an enquiry under the law or to give evidence as a witness;
  - (iv) has made a good faith allegation that a person has committed an act of discrimination in contravention of the law; and also
  - (v) that one believing that the other person has done or proposes to do any of the above listed in (i) to (iv). The penalty for committing any of these offences is a fine each.

### **Supplemental Remedies**

The law provides for remedies without prejudice to any other remedy that may be available in any court i.e. a person can seek other civil remedies outside of those provided in the law.

The law provides that any person aggrieved by any act or omission of an employer is entitled on the conviction of such employer to:

- (i) damages for any direct or indirect loss suffered;
- (ii) an order directing the employer to redress the contravention including an order for reinstatement;
- (iii) any other order the court may deem fair and just in the circumstances.

It should be noted that the court can only make these supplementary orders where there has been a conviction. Any order for damages or compensation can be enforced under the provisions of the Summary Jurisdiction (Procedure) Act, Chapter 10:02.



# The Occupational Safety & Health Act, Cap 99:10

## ▪ *Joint Workplace Safety and Health Committee*

A joint workplace safety and health committee is required at:

1. A workplace in which twenty or more persons are regularly employed
2. A workplace in which hazardous chemicals, physical agents and biological agents are used or intended to be used
3. A workplace other than a construction site where less than twenty workers are regularly employed with respect to which a regulation concerning critical substances applies.

This does not apply to an employer at a construction site at which work is expected to last less than three months or to a prescribed employer or workplace or class of employers or workplaces.

The committee shall consist of at least 4 persons where less than 50 persons are being employed and at least 6 persons where fifty or more are being employed. At least half of the members of the committee shall be workers who do not exercise managerial functions.

Some of the functions of the committee include:

- Identify situations that may be a source of danger or hazard to workers;
- Make recommendations to the employer and the workers for the improvement of the health and welfare of the workers;
- Recommend to the employer and the workers the establishment, maintenance and monitoring of programmes, measures and procedures respecting the safety of workers.

## ▪ *Duties of Employers*

- Ensure that equipment, materials and protective devices and clothing are provided;

- Ensure that equipment, materials and protective devices and clothing provided are suitable and adequate and in good condition;
- Measures and procedures prescribed are carried out in the workplace;
- Ensure that equipment, materials and protective devices and clothing provided are used as prescribed;
- Provide information, instruction and supervision to a worker to protect the safety and health of the worker;
- When appointing a supervisor, appoint a competent person;
- Afford assistance and co-operation to a committee and a safety and health representative in the carrying out of any of their functions;
- Take every precaution reasonable in the circumstances for the protection of the worker;
- Post, in the workplace, a copy of the OSH Act and any explanatory material prepared by the Occupational Safety and Health Authority outlining the rights, duties and responsibilities of workers;
- Prepare and review at least annually a written OSH policy in consultation with the committee or safety and health representatives;
- Post the OSH Act in a conspicuous location in the workplace;
- After being notified that a female worker is pregnant adapt the working conditions of such worker;
- Establish a medical surveillance programme for the benefit of workers.

▪ ***Duties of Supervisors***

- Ensure that the worker works in the manner and with the protective devices and clothing, measures and procedures required by this Act and the regulations;
- Ensures that the worker uses or wears the protective devices and clothing that the worker's employer requires to be used or worn.

▪ ***Duties of Workers***

- Use or wear the equipment, protective devices and clothing that the worker's employer requires to be used or worn;
- Report to the employer or supervisor the absence or defect of any equipment, protective devices or clothing of which the worker is aware will endanger his life or the life of another;
- Report to his employer or supervisor the existence of any hazard;
- Take care of the personal protective equipment, protective devices and clothing that the employer provides;
- A worker may ***refuse to work*** or do a particular work where there exists a serious or imminent danger to his life and health or the life of another.
- No discipline, dismissal, threat, intimidation or coercion of a worker by an employer because the worker has acted in compliance with this Act.
- ***Notification of Accidents*** Where any accident arising out of and in the course of the employment of any worker:
  - o If the accident causes loss of life to the worker, written notice of the accident shall be sent forthwith by the employer to the OSH Authority;
  - o If the accident disables the worker for more than 1 day notice of the accident shall be sent within 4 days by the employer to the OSH Authority;

# Termination of Employment

The rules concerning the termination of employment are set out in the *Termination of Employment and Severance Pay Act, Chapter 96:01*. Termination is often also called being fired, laid off, dismissed, let go. The Act protects people who do not have fixed term contracts (contracts for a preset number of years). The Act sets out the minimum standards of rights and benefits to the employee being terminated. If the employee has a better right or higher benefit by agreement, or through their union arrangements, that better right or higher benefit applies.

## A person's employment is terminated if they are:

- Dismissed
- The employer stops employing them
- The employer constructively dismisses the employee and the employee resigns
- The employer lays off the employee for more than 6 weeks.

## How is a contract of employment terminated?

A person who does not have a fixed term contract (a contract for a specific number of months or years) of employment may be terminated:

- If the parties both agree to end the employment
- Where there is redundancy
- By either employer or employee for good and sufficient cause
- By either employer or employee after giving notice to the other

**What is redundancy?**

Redundancy arises where the employer needs less employees because there is:

- Modernization or mechanization of all or part of the business.
- The discontinuance of all or part of the business.
- The sale or other disposition of all or part of the business (in this case, if the new owner of the business agrees to retain the employee with his continuous years of service, the employee does not become redundant).
- The reorganization of the business by the employer to improve efficiency.
- The impossibility or impracticability to carry on business at its usual rate due to shortage of materials, a mechanical breakdown, some unforeseeable circumstances that prevent someone from fulfilling a contract or some natural disaster.

**What is good and sufficient cause?**

You may be dismissed summarily without notice or payment of severance if you are guilty of serious misconduct related to the employment relationship that has a detrimental effect on the employer's business.

One act of misconduct, or disobedience or insubordination may not justify dismissal. Summary dismissal is justified where the employee acts in a way that ignores the employment contract and its essential conditions. Summary dismissal has been held justified in cases of:

- An unlawful strike (one not authorized by the union agreement)
- Dishonesty
- A series of incidents of intoxication
- Asking for or receiving a bribe
- Taking secret work for yourself and depriving the employer of the work
- Gross negligence

- Willful disobedience to orders and insubordination on more than one occasion
- repeated breach of employment agreement or unsatisfactory performance - where the employer has given the employee instructions on how to perform his duties, and a written warning to adhere to the instructions, but the employee continues to perform unsatisfactorily or again breaches the conditions of employment within 6 months.

### **What is not good and sufficient cause? When is the dismissal 'Unfair'?**

Your employer cannot dismiss you or discipline you because of any of the following listed below.

- On the basis of your race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, family responsibility, or marital status, age.
- Because you become or are pregnant
- Because you were off work because you were sick, if you have a medical certificate
- Because you are part of a union and went on strike
- Because you refuse to do the work of a person who is lawfully on strike
- Because you filed a complaint against the employer that they breached the rules or laws

### **What is Notice?**

Dismissal with Notice is the opposite of summary dismissal. Summary dismissal is immediate and used where there is serious wrongdoing. Notice is letting the other party to the contract know *in advance* that you are terminating the contract. With notice wrongdoing does not have to give a reason for ending the contract.

The employer may give the employee notice that the she/he is terminating their employment. The employee may give the employer notice that the she/he is quitting the job.

Where the employment has been for less than a year notice must be given at least two (2) weeks in advance of firing or quitting. Where the employment has been for more than one year notice must be given at least one (1) month in advance of firing or quitting. The parties can agree to longer periods of notice.

An employer cannot give notice of termination of employment during an employee's period of absence on any authorized leave (medical, annual, etc). Notice is not necessary if employment is being terminated for wrongdoing.

Instead of notice the party terminating the contract may pay the other a sum equal to the remuneration or benefits (replace with WAGES) payable for the notice period.

**What is laying off?**

Laying off is discharging an employee temporarily – for less than 6 weeks. An employee may be laid off if the employer's business has reduced temporarily because of shortage of materials, a mechanical breakdown, some unforeseeable circumstances that prevent someone from fulfilling a contract or some natural disaster. If you are laid off for more than 6 weeks that is a dismissal.

**Disciplinary Action**

An employer may take disciplinary action other than dismissal against an employee. Disciplinary action may be a warning letter or for more serious misconduct - suspension without pay. An employer cannot impose any fine or monetary penalty on an employee. If an employee believes that the disciplinary action imposed is unreasonable they can complain to the Chief Labour Officer.

**Entitlement on Termination - Severance and Redundancy Allowance**

Employees who have completed more than one year of continuous employment are entitled to a severance or redundancy allowance when their employment is terminated other than by dismissal for cause.

**How to calculate your period of continuous employment?**

Your employment period begins on the first day you start to work and continues until you are permanently terminated. It includes the periods you spend on annual leave or sick leave, periods when you were laid off, suspended, or on lawful strike. It also includes your years of service with the old business owner when the business is sold and has a new owner and the new owner has agreed to take the old business together with its workers and their benefits.

Your continuous employment period does not include the period you spend on probation unless it is mutually agreed on or before the date you start working. A probation period is a time in which the employer can assess whether the new employee is suitable for the job. It is the period when you first start work. It may last up to 3 months. In that period the employer may dismiss you for any reason without notice and without having to pay severance.

**How to calculate the severance allowance?**

The allowance payable to a terminated employee is:

- One week's wages for each completed year for the first five years; and
- Two week's wages for each completed year for the sixth to the tenth year; and
- Three weeks' wages for each completed year from the eleventh year up to a maximum of fifty-two weeks pay.

The total amount of severance or redundancy allowance cannot exceed 67 weeks wages. Wages here means basic wages and does not include the payment of any allowances.



**An employee is not entitled to severance or redundancy allowance:**

- If they are summarily dismissed.
- If they are terminated during the probationary period.
- If they are dismissed after receiving written warning.
- If they unreasonably refuse re-employment by the employer under no less favourable conditions or not more than ten miles from his place of previous employment in the case of redundancy.
- If they have attained retirement age and are entitled to a gratuity and/or pension under any law, collective labour agreement or contract of employment. If the gratuity is less than the severance or redundancy allowance under the Act, the employee must get the severance allowance.

## The Leave With Pay Act

**Wages** under the Act does not include overtime pay or bonuses, unless the bonus forms part of the regular amounts.

**Entitlement** Every worker being in employment shall be entitled to a period of leave with pay:

- Of not less than one day for each completed month of employment
- If employed on a half day basis, half day shall be counted as a day in the computation of not less than one day for each completed month of service;
- Of not less than one day for every completed twenty days if employed on a daily basis
- Of not less than one day for every completed one hundred and sixty hours if employed on an hourly basis.

- No employer shall require a worker to take his leave with pay in periods of less than six consecutive days. Sundays and public holidays are not counted as leave with pay.

*The employer shall determine the date on which the leave shall begin taking into account any special request by the worker.*

- The employer shall pay the worker wages equal to each day for the period the worker is on leave. If the worker requests, the wages shall be paid to him before he proceeds on leave.
- Any agreement between the parties where the worker contracts to receive any less benefit than he is entitled to under the Act shall be of no effect.

# You and Your Government

## The separation of powers under the Constitution of the Co-operative Republic of Guyana.

Our Constitution is the agreement among our citizens, and between our citizens and government, that sets out the framework for the society we wish to live in. Our Constitution says that we are a democracy in which citizens choose the government, and it lists the fundamental rights of citizens. The Constitution also provides for the separation of governmental powers so that no one branch of government, or person, can make decisions that change the terms of our agreement for our society, or take away or diminish our individual rights and liberties.

### Why divide the powers of government?

If all the powers of Government belong to one person they may be a tyrant, take advantage of the power and make rules and decisions that result in citizens losing their freedom and rights. Montesquieu in 1748 said:

*“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty... there is no liberty if the powers of judging is not separated from the legislative and executive... there would be an end to everything, if the same man or the same body... were to exercise those three powers.”*

To avoid this happening, government is divided into 3 branches.

### The 3 branches of government and their roles

Government consists of:

- i. the Parliament,
- ii. the Executive, and
- iii. the Judiciary.

#### Parliament

- Parliament makes the laws for ‘the peace, order and good governance of Guyana’. Parliament has 65 seats and consists of 64 parliamentarians (the National Assembly) and the President. Citizens every 5 years at elections vote for a list of candidates for political parties. The parties get seats in the Parliament based on the number of votes they get at elections. The leaders of the parties

choose the people from the list to sit in those seats and represent the parties voters in Parliament. Those 64 Parliamentarians in the National Assembly debate and discuss what the laws of the country ought to be and vote on what rules are to become our law. Some rules require the votes of a majority of Parliament (33 members) to become law, some more important rules like those affecting citizens individual rights and liberty, and rules that govern how to amend the constitution may require a super majority of more than 2/3 of the elected members of Parliament to change.

### **The Executive**

- The Executive is another branch of Government. The Executive authority of Guyana is vested in the President and may be exercised by them either directly or through officers' subordinate to them: see Article 99 (1), Constitution of Guyana. The Executive is made up of the President and their cabinet, the ministers, and public servants. The Executive is responsible for developing national policy, suggesting rules to parliament to be voted into law, enforcing the rules passed into law by Parliament, the administration of the country, foreign affairs, and declaration and conduct of wars. The Executive includes all the ministries including those responsible for education, health, and the police force. Any time you interact with a ministry, a school, a police officer, the public hospital, you are interacting with the Executive.

### **The Judiciary**

- The Judiciary are the Judges and Magistrates. The judiciary does not make laws or policy. They are the guardians of the Constitution, the enforcer of the bargain between citizen and state, and bargains between citizen and citizen. They ensure that Parliament, and the Executive, and the citizens, follow the agreed rules laid out in the Constitution and in other laws.

The court has the power to hear and determine complaints brought by citizens against Parliament, by citizens against the Executive, by the Executive against citizen, and by citizens against each other.

Citizens who feel that the rules made by parliament are unfairly affecting their rights and liberties may file an action at the court asking the court

to declare the law unconstitutional. Citizens who feel that parliament has made a law without complying with the rules for lawmaking laid out in the constitution may file an action at the court asking the court to declare the law unconstitutional. Citizens who feel that executive, the police, or any ministry, agency or public servant have treated them unfairly, or breached the constitution, or unlawfully affected their fundamental rights, may file an action asking the court to declare the executive's action unlawful and for other kinds of redress. Citizens who feel that another citizen has done them a wrong, or breached an agreement, may file an action to enforce the agreement, or compensate them for the wrong. The state can file an action against a citizen who has committed a crime, asking the court to imprison or punish the wrongdoer.

All courts must exercise their functions independently of control and direction of any other person or authority and shall be free and independent from any form of direction and control: *Article 122A (1), Constitution of Guyana.*

### **How does separating the powers of Government into 3 distinct branches do good?**

- It allows for a basic democracy which is government by the people through their chosen representatives sitting in parliament. The privilege of choosing the rules and making the laws stays with the parliamentarians who the citizens voted for to represent them, it doesn't go to the judiciary who are not chosen by the citizens at elections, nor to a member of the executive who ought not to make rules on their own.
- It ensures checks and balances in lawmaking that allows each branch to stop the other branch from acting unlawfully, but with safeguards to ensure the lawmaking power stays in Parliament. If the Judiciary finds that Parliament has passed a law that is unconstitutional the Judiciary may declare that law unconstitutional and strike it down, but if Parliament insists on having that law, despite it being at odds with the current constitution, it may pass it by a special majority. The President has a right to veto a law, refuse to sign it into being. If Parliament insists that it be the law Parliament, despite the President disagreeing, Parliament may then pass the law with a larger majority.

- It provides checks and balances and helps keep the Executive efficient and honest by requiring that the Executive publish and defend its intended budget and get approval from Parliament for its planned spending and projects.
- Separating different types of power limits, the scope for abuse of power and oppression. If too much of one kind of power is concentrated in the hands of one person or institution there is more of a risk of that power being abused.

The Supreme Court of Judicature is the ultimate guardian of the law. An independent judiciary is a pillar of democracy. The Judiciary exists to defend the Constitution which is the agreement between citizens and citizens, and citizens and the state, and to safeguard citizen's liberties and rights.

# Citizenship

The laws concerning Citizenship are set out in -

- **the Guyana Citizenship Act, Cap 14:01**
- **Chapter IV of the Constitution of the Co-operative Republic of Guyana, Cap 1:01**

## What is a citizen?

A citizen is a participating member of a country's political community and has rights and privileges and duties.

Not all people living in a country are citizens. Some residents in a country may be foreign born people who do not owe allegiance to the country, and who do not have the right to participate in the political process of the country.

## Citizenship rights and obligations

All citizens have the right to enter the country, live in the country, work in the country, receive healthcare at government hospitals and clinics. Adult citizens have the right to vote. Minor citizens have the right to free primary and secondary education.

The Constitution of Guyana guarantees each citizen the right life, liberty and security, the protection of the law, freedom from slavery and forced labour, freedom of expression, freedom of assembly and association, freedom of movement, the right to work; the right to an education, equality before the law, the right to a fair trial, and protection of their property rights.

All citizens owe allegiance to the co-operative Republic of Guyana and have the duty to uphold the laws of the country.

## How do I become a citizen of Guyana?

- By birth: A person born in Guyana, to a Guyanese parent is automatically a citizen of Guyana. (Art 43 of the Constitution).
- By descent: A person born outside Guyana, to a Guyanese parent who was born in Guyana, may be registered as a citizen of Guyana (Art 44, sections 5-6 Citizenship Act).
- By marriage: A person who is married to a Guyanese citizen can apply for Guyanese citizenship after 3 years of marriage and being a resident in Guyana for one year. (Art 45 of the Constitution).

- By naturalization: A person who is not a Guyanese citizen can become a citizen of Guyana by naturalization if they have lived in Guyana for more than 5 years, are of good character and mean to continue living in Guyana (section 9 Citizenship Act). The Guyana Citizenship Regulations set out the rules to be followed and forms to be used to apply for citizenship. The application can be made at the Ministry of Home Affairs.



# Going to Court

## Which court?

If you are involved in legal proceedings you may appear in any of the 6 courts depending on the kind of matter you have, and on the stage of the matter. The Courts are the –

- Caribbean Court of Justice
- Court of Appeal
- Full Court
- High Court
- Land Court
- Magistrate's Court

Matters start in either the Magistrate's Court, Land Court or the High Court depending on the kind of matter and the amount of money involved. If you are displeased with a decision in the Magistrate's Court, the Land Court or the High Court you may appeal that decision/ask another court to review it. The Courts that carry out the reviews/hear the appeals are the Full Court, Court of Appeal (CoA) and Caribbean Court of Justice (CCJ), depending on which court's decision you are challenging. Matters involving the rules of Caricom set out in the Treaty of Chaguaramas begin in the CCJ.

## Magistrates' Courts

The Magistrates' Courts are the largest in number. There are Magistrates' Courts in every county. The majority of cases are heard at the Magistrate's Court. Small criminal and civil matters are heard in them, including cases of assault, petty theft, abusive language, landlord and tenant claims, and claims for debts under \$100,000. Most cases brought against citizens by the police are heard in the Magistrates Courts.

The person responsible for prosecuting crimes and bring offenders to justice is the Director of Public Prosecutions (DPP). In some cases, however, a citizen may also bring a criminal action against another citizen in the Magistrate's Court. They are called 'Private' Criminal

actions. The DPP has the final say in whether a citizen may prosecute another citizen privately.

The Magistrates' Courts also conduct preliminary inquiries/committal proceedings into the merits of charges for indictable offences such as rape, manslaughter, murder and treason. The Magistrate determines whether the prosecution have enough evidence to commit an accused to stand trial in the High Court of the Supreme of Judicature. If the Magistrate feels there is insufficient evidence to make an accused have to stand trial for a crime, the Magistrate may discharge the accused and send them home. A discharge is not an acquittal or a finding of not guilty. The prosecution may collect more evidence and charge the accuse again for the crime.

### **High Court**

Serious (indictable) criminal cases such as murder and rape, civil claims for amounts over \$100,000, cases involving ownership of land, and matrimonial and family matters, are heard in the High Court of the Supreme Court of Judicature. These cases include trespass to land and claims for damages for injuries as a result of traffic accidents.

There are High Court locations and registries at locations in each county - specifically at Georgetown, New Amsterdam and Suddie.

### **Full Court**

Appeals from the Magistrates' Courts and from some decisions of a High Court Judges are heard by the Full Court of the High Court of the Supreme Court of Judicature. The Full Court sits at High Court locations, and consists of 2 High Court Judges reviewing the decision of a single Judge, and decisions of Magistrate's.

### **Court of Appeal (CoA)**

The Court of Appeal hears criminal and civil appeals from the High Court, from the Full Court and from Land Court. The Court of Appeal is in Kingston, Georgetown, Demerara. The Court of Appeal by law should consist of at least 2, and up to 5 Justices of Appeal. The Chancellor, who is the head of all the judges, and the Justices of Appeal comprise the Court of Appeal. Three or five members of the court may sit to hear appeals.

**Caribbean Court of Justice (CCJ)**

The final court of appeal is the Caribbean Court of Justice which is located in Trinidad and Tobago. The Caribbean Court of Justice may review decisions of the Court of Appeal and may hear cases concerning the Revised Treaty of Chaguaramas which is the treaty establishing the Caribbean Community (CARICOM).

**Land Court**

The Land Court is a court established by statute to deal with all legal and titling issues in Land Registration Areas. Land Court also adjudicates on prescriptive rights matters in Deeds Registration areas. Commissioners of Title are the Land Court judges.

**Who presides over the courts and how are they addressed?**

A Magistrate, presides over each Magistrate's Court. Some Magistrate's Courts deal exclusively with certain kinds of case, e.g. claims for possession by landlords and fraud. Some Magistrates' Courts deal with any case arising in the district in which the court is situated. A magistrate is addressed as 'Your Worship'.

A Puisne Judge presides over sittings of the High Court. There is provision for 20 High Court. The chief judge is the Chief Justice. Judges of the High Court are addressed as 'Your Honour'.

Sittings of the Full Court are presided over by not less than two judges. They are addressed as 'Your Honour'.

Sittings of the Court of Appeal are presided over by the Chancellor and/or two or four Justices of Appeal depending on the matter. Justices of Appeal are addressed as 'Your Honour'.

The Land Court judge is a Commissioner of Title. They may be addressed as 'Madam Commissioner' 'Mister Commissioner' or 'Your Honour'.

**How do I begin legal proceedings?**

This depends on whether it is a civil or criminal matter and if it is civil, the kind of claim you want to make.

If you want to sue someone for a sum of money below \$100,000. or for property worth less than \$100,000., you may file a claim called a *plaint* at the Court Office in the magisterial district where you live or the matter arises. A copy of the, and a notice of the date fixed for its hearing before a magistrate, will then be served by a bailiff of the Magistrate's Court on the person you have sued. Both you and the person you sue will have a chance to be heard in court, to speak and to show evidence to a Magistrate, who will then decide what the true facts are in the matter, and what law is to be applied to those facts, and what the legal outcome of the whole matter is.

If you are the victim (the virtual complainant or VC) of a crime and the DPP is bringing an action against the alleged perpetrator of the crime (the accused) that charge against the accused will be filed at the court office in the magisterial district in which the crime occurred. If you wish to bring a private criminal case, you will file the complaint in the Registry at the court office in the magisterial district in which the incident occurred, and a copy of it will be served upon the person you accuse of committing a crime against you.

All civil matters for a sum of money above \$100,000. or for property worth more than \$100,000, and all other civil matters including those involving marriage, children, family, trespass and title to land, employment, slander, personal injuries, and your constitutional rights are heard in the High Court. The actions depending on its nature may be begun by statement of claim, or by a fixed date application or by a petition. They are filed at the Judicial Registry of the High Court. In those actions you are the Claimant and the person you are suing is the respondent. The action must be served on the respondent. You both have the right to be heard in court, to give your testimony and show your evidence to the Judge, who will decide what facts are proved to be true, apply the law to those facts, come to a decision in your matter, make an order communicating that decision and giving any necessary directions to enforce that decision.

All criminal proceedings in the High Court of the Supreme Court of Judicature are brought by the Director of Public Prosecutions. Criminal proceedings in the High Court take place before a Judge and a jury.

**Do I have to have an Attorney-at-Law?**

You do not have to have an Attorney-at-law in many of the matters in the High Court of the Supreme Court of Judicature and Magistrate Court, but you should have an Attorney-at-law because the rules of

law, and of evidence, and the legal procedures, are followed very strictly and if you do not know and follow them you may lose your case.

**How should I dress for court?**

Dress conservatively and in a sober and respectful manner for Court. Do not wear short pants, vests, or tank tops. Try not to wear revealing or tight clothing, or clothing with slogans. Do not wear hats.

# Mediation

## What is Mediation?

Mediation is when you and the person you have a dispute with meet with an impartial and neutral person who will help you negotiate to settle your differences.

## Who is a Mediator?

A mediator is a trained person and is as an independent, neutral third party. Their job is to help the parties to a dispute reach a voluntary settlement of the dispute. The mediator does not provide legal advice or representation and does not make any decisions. The decisions at mediation are made by the parties themselves.

## When does Mediation happen?

Mediation is a court-connected process. The parties in a court matter may go to mediation during the court process instead of or before going to a court trial. The court encourages parties to attempt to negotiate and settle their differences at mediation, instead of going to trial.

## Benefits of mediation

- (a) Mediation saves time. It brings a quicker end to a dispute instead of a lengthy trial.
- (b) Mediation results in a voluntary settlement, so both parties can find justice. At trial only one party can win.
- (c) Mediation is cheaper.
- (d) A matter settled at mediation is not likely to be appealed.
- (e) Less, or no court costs are awarded if a matter is settled at mediation.
- (f) Mediation allows each party to fully tell their story, unlike a trial where some evidence may be excluded on legal grounds, or because it is not fully relevant to the particular issue in dispute.
- (g) Mediation is conducted in an informal setting and is confidential.

- (h) Mediation allows the parties to develop creative solutions to all issues important to them and not just the underlying legal disputes.
- (i) Mediation preserves personal, professional and business relationships.
- (j) The parties can select their Mediator.
- (k) Mediation agreements usually have high compliance rate since people are more satisfied with solutions that have been mutually and voluntarily agreed to by them.
- (l) In a successful mediation, everyone wins.

**The mediation process**

A matter may be referred to mediation by the court, either at the court's suggestion, or at the request of the parties. A mediator is selected from a roster of trained mediators attached to the Mediation Centre located in the High Court compound at Georgetown. A date is fixed for the mediation. Parties attend with their lawyers. The mediation process is explained to the parties by the mediator, the parties tell their stories, voice their concerns, and with the mediators help try to negotiate their differences and settle their dispute.

If an agreement is reached, a Mediation Agreement is drafted by the mediator, and signed by the parties. The case will go back to the judge before whom the matter came up and the agreement will be entered as a consent order. That consent order is an order of court and has the same effect as an order of court coming out of a trial. If the mediation is not successful, the matter is put back on the court list for hearing.

**Cost of mediation**

The first session of mediation is paid for by the State and any subsequent session(s) are paid for by the parties equally.

**MEDIATION CAN BE A WIN-WIN SOLUTION.**

# Legal Aid

**What is legal aid?**

Legal aid is giving legal advice, assistance and representation to people who have a difficulty affording legal representation. It is a vital service in ensuring equality and access to justice.

**Who provides legal aid?**

The Guyana Legal Aid Clinic provides legal advice, assistance and representation to people in need. It is a nonprofit organization. It is managed by a Board of Directors. Legal services are provided by a team of qualified Attorneys-at-Law.

There is also the Children's Legal Aid Project which provides legal aid services directly to children (persons under 18) who need assistance with criminal and/or civil matters. The Children's Legal Aid Project office is located in the upper flat of the Guyana Legal Aid Clinic.

The Guyana Legal Aid Clinic has its main office at the Maraj Building on Charlotte and King Streets, Lacytown, Georgetown, Guyana. The clinic also has three branch offices which are located at the Regional Democratic Council (RDC) Compound at Anna Regina, Essequibo Coast, the Regional Democratic Council (RDC) Compound at Fort Wellington, West Coast Berbice and the Regional Democratic Council (RDC) Compound at Vryman's Erven, New Amsterdam, Berbice.

**Who may apply for legal aid?**

Anyone without the means to pay a lawyer full price for legal representation may ask the Guyana Legal Aid Clinic for aid. This includes persons with a low income, unemployed, and pensioners. Legal Aid may require you to contribute to filing fees and to pay a small legal fee. How much you may be asked to contribute depends on your pocket – on your income, your ability to pay.

**What do I need to take when going to the clinic?**

1. All relevant documents in relation to your matter;
2. Identification; and
3. Proof of income and expenses;
4. Consultation fees (a minimal amount) and some money to pay to start your matter, if you can afford either.



All applicants are means-tested to determine whether they are eligible for legal aid and whether they can afford to make a contribution towards the legal cost of the service.

**Types of matters done:**

The clinic offers representation in criminal, and many kinds of civil matters in the Magistrate's Court, High Court and Court of Appeal, including matrimonial and family matters, and employment matters.

The clinic does not offer representation in land sales and purchases, landlord and tenant possession matters, prescriptive title applications, administering high value estates, or defamation actions.

# Lawyers

The laws governing lawyers are set out in the **Legal Practitioners Act**, Cap 4:01, Laws of Guyana. There is a Code of Conduct for Attorneys-at-Law. The code is set out at the Fourth Schedule to the Legal Practitioners Act.

## Who are lawyers?

A lawyer, also called an Attorney-at-Law, or Counsel, is a person who is trained and qualified to advise people about the law, and to write legal documents, and is entitled to represent people in court.

## What do Lawyers Do?

- Give legal advice
- Research legal information and problem solve
- Prepare legal documents
- Represent clients in court
- Represent clients in transactions
- Mediate disputes

Some lawyers specialize in particular kinds of legal work, such as civil work or criminal work or litigation (contested court actions) or matters not involving litigation.

## Do I need a lawyer?

In both criminal and civil matters, you have the right to act on your own behalf or to employ a lawyer of your choice to act on your behalf. (Article 144 of the Constitution, Cap 01:01). In all matters it is best to have a lawyer's advice, and if possible, representation in court.

### **Can I Have More Than One Lawyer?**

You may have as many lawyers as you like. If you already have a lawyer, other lawyers may not be willing to advise you without your original lawyer's knowledge and consent. The Code of Conduct for Attorneys-at-Law says that your new lawyer must inform any previous lawyer you had that they will now be acting for you.

### **What Authority Does My Lawyer Have?**

Lawyers act on the information you give them and, on your instruction, but the lawyer has control over how to conduct your case. You can expressly limit what your lawyer can do on your behalf but if you don't you will be taken to have authorized them (implied authority) to:

- Conduct the presentation of your case in court as they fit whether you are there or not, e.g., in deciding whether or not to call or cross-examine a witness, agree to a settlement or consent to judgement.
- Accept service of documents on your behalf, except those which must be personally served upon you, e.g., a divorce petition; and
- Receive payments of debts, damages, and costs.

### **Can I Dismiss/ Change my Lawyer?**

You can change or dismiss your lawyer at any time and either represent yourself or employ another lawyer.

If you have paid your lawyer for the work, they have done for you they must give you your papers and property relating to the matter. If you haven't paid, your lawyer can keep your papers until you pay.

### **Paying for a lawyer**

Lawyer's services are not free, you must pay them. If you cannot afford to pay a lawyer you may go to the Guyana Legal Aid Clinic for legal representation at a fee that is set based on your ability to pay. Members of the Guyana Association of Women Lawyers also

sometimes offer their services to people in need at little or no cost. The State pays for legal representation for people charged with murder. There are many people who suffer great disadvantage for lack of legal help because they cannot afford a lawyer.

### **How do I pay my lawyer?**

You and your lawyer will discuss and agree on the cost of their legal services and when the fees must be paid. Some fees are fixed by law, some agreed upon by you and your lawyer.

- Fixed fees. The amount that your lawyer can charge you for certain work (e.g., in relation to buying and selling a property and obtaining probate or letters of administration of an estate) is fixed by law. You can ask to be shown how the amount you have to pay has been calculated.
- Fees by agreement. You and your lawyer can agree how much you will pay for the work she/he is to do for you. This agreement must be in writing. If you are making a claim for damages, you may agree to pay your lawyer a percentage of the damages awarded. The percentage should not exclude should be reasonable and certainly not more than 33% except in very small cases.
- Fair and reasonable fees. If your lawyer's fees are not fixed by law or agreed with you, she/he can charge what she/he likes but the amount must be fair and reasonable.
- Taxation. If you have paid the amount charged but are not satisfied that it is fair and reasonable you can, within 1 month after payment, require your lawyer to have the amount charged taxed (reviewed) by the Registrar of the Supreme Court. The Registrar will look at the amounts charged for items of work done and allow or disallow them depending on whether or not she/he thinks they are fair and reasonable.
- Your lawyers cannot sue you for unpaid charges unless she/he has had a bill taxed by the Registrar and an account of the amount allowed on taxation has been delivered.
- Your lawyer's bill should contain separate amounts for professional fees charged and expenses paid on your behalf and give credit for amounts paid on account.

- If you have made payments on account, you can require your lawyer to give you a bill (showing work done and the charge for it) every three months.
- Make sure that you get a receipt for all payments made.
- Remember that your lawyer can keep your papers until you have paid for work done.

### **Who pays my legal fees if I win the case?**

If you win the court may order the other side to pay your costs.

The amount of cost may be fixed by the court, agreed between the lawyers, or taxed by the Registrar. The amount agreed or taxed may not be as much as the amount you can be charged by your lawyer. This is because your lawyer can charge you for certain kinds of work that a losing side does not have to pay for. In some cases, your lawyer may agree to accept the costs paid by the other side in settlement of his/her charges.

### **What Obligations does my Lawyer have to me?**

- To act in your best interest.
- To appear in court to represent you.
- To do your work promptly.
- To use reasonable skill and care. If your lawyer fails to do this, you may be entitled to damages for negligence and breach of duty. But losing your case does not automatically mean that your lawyer has been negligent.
- To act in good faith. Your lawyer must make full disclosure to you of any conflict of interest, e.g., if she/he is personally interested in a matter which she/he is handling for you.
- To keep your confidences. This duty is so strong that even if you tell your lawyer that you committed a crime, she/he must not tell the police.

**What are the rules governing how lawyers behave?**

There is a code of conduct governing the actions, conduct and discipline of attorneys-at-law. That Code of Conduct is set out in the Fourth Schedule to the Legal Practitioners Act, Chapter 4:01 (hereinafter known as the “LPA”). It sets out the minimum standards that lawyers are expected to adhere to.

**Lawyers are expected at minimum, amongst other things, to:**

- Keep your information and affairs confidential
- Keep your property safe
- Not have intimate relations with clients
- not represent more than one interest in a matter
- Not accept a case that in a field of law that he does not have the knowledge, skill and expertise to properly represent the client
- keep their client informed of the progress in the proceedings
- do their work promptly
- appear in court to represent their client
- not advise or assist their clients to break the law
- not presents false facts, affidavits or evidence to the court
- inform their client before withdrawing their services from them
- return all papers and property to their clients once they have paid all outstanding fees
- always deal with other attorneys-at-law with courtesy, respect and in good faith

**How do I Make a Complaint Against my Lawyer?**

You may make a complaint against your lawyer if you feel they have committed a wrong against you, or breached their code of conduct. That Complaint is made to the Legal Practitioners Committee (section

22 LPA) which is set up to hear and determine complaints against attorneys-at-law.

At the end of the Legal Practitioners Act, Cap. 4:01, there is the First Schedule that contain the 'Legal Practitioners (Disciplinary Proceedings) Rules'.

At the end of the Rules there is Form 1 which is the form for complaint against an attorney-at-law and Form 2 that is the format of the affidavit setting out the reasons for the complaint, the acts complained of.

The committee must hear what you have to say and what your lawyer has to say and has the power afterward to:

- dismiss your complaint
- fine your lawyer
- reprimand your lawyer
- order your lawyer to reimburse or compensate you
- recommend to the Court that your lawyer be disbarred, prevented from working as a lawyer.

YOUR LAWYER OWES YOU A DUTY TO ACT IN YOUR BEST INTERESTS!

HOLD THEM ACCOUNTABLE.

## Police Powers of Search

### Search before arrest

The police have a right to stop and search you if they have reasonable grounds for suspecting that you are carrying prohibited drugs, stolen goods, or firearms, or are suspected of having committed any indictable offence. **(section 18 Police Act, Cap 16:01)**

The fact that the police don't find what they are looking for doesn't mean they don't have reasonable grounds for searching.

If you refuse to allow the police to search you at the location of the stop, you may be arrested and you are likely to be searched at the police station.

Failure to comply with the police request for a search may result in criminal charges. The matter will then be decided by the court, and you may be found guilty of obstructing a police officer in the execution of her/his duty.

### What you should do if you are stopped by the police Before you agree to be searched:

- Enquire from the police rank whether you are being arrested.
- Enquire from the police rank the reason for the search.
- Enquire from the police rank the authority under which the search is conducted.
- It is to be noted that you have the right to disagree to being searched if the police rank does not provide reasonable grounds to conduct the search.
- If a search is conducted against your will, you have the right to bring legal action.
- You have the right to insist that the search is witnessed by a person of your choice.
- If the police officer is in plain clothes, ask to see her/his identification card. **(Police Standing Order 73 (2) (a))**
- If she/he is in uniform take a note of the regulation number and name of the police officer if it's on their badge. As soon as possible make a note of any conversation between you and the officer and sign and date it. It may be useful later if you are charged with an offence or want to make a complaint.



- You can only be searched by an officer of the same sex as yourself.

**Search after arrest**

If you have been arrested without a warrant, the police may search you and seize any weapons and anything that can be used as material evidence for the prosecution. But they cannot search your premises without your consent, unless they obtain a warrant for that purpose or have entered your house with your consent in the course of making the arrest.

**Entry and search of private premises without a warrant**

The police have no general power to enter or search your home or any other private premises without a warrant.

They have a right of entry only in order to stop a breach of the peace or prevent one which is likely to occur or to stop someone from being seriously hurt.

In all other cases the police may not enter or search your premises without your consent. Once you withdraw your consent and ask them to leave, they must do so. If they refuse, they will be trespassers and you may bring legal action against them.

**Entry and search with a warrant**

A search warrant entitles the police to enter and search your premises without your consent and to use reasonable force to do so. A warrant can only be obtained from a magistrate or justice of peace on the strength of a statement sworn by a police officer that she/he has reasonable grounds for searching. **(section 50 (1) Cap 10:01)**

Warrants may be obtained to search for a wide range of things, including illegal drugs, firearms or stolen goods.

Powers given under a warrant vary and may include the power to search people found on the premises or to seize goods even when they are not specified in the warrant. Powers of arrest are often contained in a warrant.

Most warrants expire after they have been used once, so the police cannot demand re-entry on the same warrant. But some warrants can be used more than once and authorize entry at any time.

**What to do if the police arrive with a search warrant**

- Ask to see the warrant and read it carefully.
- It will tell you what the police can and cannot do. You have the right to read it and you need not let in the police until you have read it.

- Check the address of the premises to be searched in the warrant. You can refuse entry if the premises is not properly identified. You can refuse entry to adjoining premises, for example a flat over a shop if only the shop is named in the warrant.
- Ask to see the warrant card of the officer in charge. It will help you to check that the callers are genuine police officers, and help you to identify the police officer if you need to make a complaint about any illegality of the search.
- If you are alone, try to contact a lawyer or someone of your choice to witness the search.
- If the police refuse to let you make a phone call, do your best to see what the police seize.
- If possible, someone should watch every area that is being searched.
- Unless the warrant says that the police may search you or anyone else in the premises you can refuse to be searched.
- A search should take place between 5 a.m. and 8 p.m. unless the warrant allows it to be carried out outside these hours.

### **Powers of arrest**

According to law, an arrest is the seizing or touching of a person to restrain him. In Guyana, powers of arrest are enjoyed both by private citizens and the police. There are common law powers of arrest without the need for a warrant, and there are instances where a warrant is needed for an arrest.

### **The Police power to Arrest without warrant**

It is lawful for any member of the Police Force to arrest a person without a warrant in the following circumstances.

1. When a person commits an offence punishable on indictment or summary conviction,
2. When a person is charged with having committed a felony or misdemeanor,
3. When a person is found disturbing the public peace, or where he has good cause to suspect a person of having committed or is about to commit any felony, misdemeanor, or breach of the peace,
4. When a person found loitering between 8:00pm and 5:00 am **(Section 16 of the Police Act 16:01).**

### **Arrest with a warrant**

A warrant is a document signed by a magistrate or justice of the peace, who directs a police officer to arrest a person suspected of having committed an offence. A warrant cannot be issued to a private citizen.

In order to get a warrant a police officer must give the magistrate details of the case in a written and sworn statement. The magistrate will then decide whether to issue a warrant. **(section 14 Summary Jurisdiction Procedure Act Cap 10:02, section 53 Criminal Law Procedure Act Cap 10:01)**

A warrant must include the name of the person to be arrested and a description of the offence in simple language. If the offence was created by a written law, there should be a reference to the relevant provision in the law. **(Form 6 Criminal Law Procedure Act Cap 10:01)**

No claim for damages can be made against a police officer who arrests someone under a warrant that turns out not to have been properly issued.

### **If you are arrested with a warrant**

Ask to see it. A police officer can arrest you without having the warrant with her/him, but must show it to you as soon as possible after the arrest. **(section 21**

### **Police Act Cap 16:01)**

Check that your name is on the warrant.

Even if you think that the warrant may not be valid, do not resist arrest as this may lead to further charges. **(section 28 Summary Jurisdiction Offences Act Cap 8:02)**

If you are arrested without a warrant, you must be told in simple language the reason for your arrest **(Police Standing Order No 73 (2)(b))**. If you are not told why you are being arrested you should ask. The police officer is duty bound to tell you the reason for the arrest. However, if you are caught red-handed committing an offence, an explanation is not needed. Further the arresting officer is under no obligation to state the reason for the arrest if you make giving an explanation impossible by resisting arrest. Even then, the officer must give the reason for the arrest as soon as possible.

Members of the public are under a duty to help a police officer in making an arrest if called upon to do so. Failure to help without reasonable excuse is an offence for which you can be fined or imprisoned. **(Section 17 Police Act Cap 16:01)**

#### **Citizen's arrest**

You can arrest anyone who you see committing an **indictable** offence **(Criminal Law Procedure Act, Chap 10:01)**. You should think twice before doing so as you can be sued for damages if you arrest the wrong person, or an offence has not in fact been committed.

#### **Going to the station to assist with enquiries.**

If a police officer asks you to go to the police station with her/him to assist with enquiries, for questioning or any other purpose but does not say that she/he is arresting you, you do not have to go. However, if you refuse, she/he may arrest you. If she/he tells you that she/he is arresting you it is better not to resist as this may involve further offences. If you are arrested wrongfully, you may be able to sue the police for wrongful arrest and/or false imprisonment.

#### **When making an arrest a police officer should:**

1. Identify herself/himself by giving her/his name, number and the station at which she/he is based. **(Police Standing Order No 73 (2) (a))**
2. Take you directly to the nearest police station.
3. Only use such force as is reasonably necessary. Force will not be justified if you do not resist arrest. Handcuffing is only justified if it is reasonably necessary to stop you escaping or to prevent violence. **(Police Standing Order No 73 (2) (g) )**

#### **After you have been arrested**

1. If you have been arrested it is advisable to see a lawyer. You have the right to take legal advice in private. **(Judges Rules (c) Chapter 3:02)** If you do not know a lawyer, ask your relatives or friends to find one.
2. You have the right to make at least one telephone call.
3. It is better not to answer any questions or sign any documents until you have spoken with your lawyer.
4. If you are beaten or otherwise injured demand to be taken to a doctor for treatment. Make sure that you get a medical certificate.
5. It is lawful for the police to take and record for the purpose of identification your photographs and fingerprints if you are from

time to time taken into custody. If you were never taken into custody and you are subsequently freed of charge, the photographs and fingerprints are to be destroyed or handed over to you. **(section 25 Police Act Cap 16:01)**

6. The police should either charge or release you (with or without station bail) within 72 hours of arrest **(see Article 139(4) of the Constitution of the Co-operative Republic of Guyana)**. However, the police may apply to a judge to extend the time that you are to remain in custody. You can ask for bail and the police should grant it if they are satisfied that (a) you will return to the station when requested and (b) your release will not hamper their enquiries or investigation.
7. If you are held for an unreasonable long time without being charged and taken before a magistrate or being placed on bail, you can take legal action to be released.

## Police Powers of Questioning

In many cases you will want to help the police when they ask you questions as they need public co-operation to do their job properly. But it is important that you know when you are not legally obligated to co-operate.

### The right to silence

In general, you do not have to answer police questions, whether they are informal or part of an official enquiry. However,

- \* Failing to answer certain questions related to road traffic investigations is an offence.
- \* Failing to offer an explanation when you have been caught committing an offence may be used against you; and
- \* Refusing to answer questions, particularly when the police have the power to stop and search you, may cause the police to become suspicious and to arrest you, even though the suspicion is unfounded.

Rather than remaining completely silent it might be better to say something like “I do not want to say anything until I have seen my lawyer.” Although you may feel that it would be quicker and easier to clear a matter up by answering police questions it is better not to do so until you have had legal advice. But if legal help is not readily available to you and you are able to make a statement that will prove your innocence, it may be better to do so or to otherwise co-operate with the police.

### Rules governing police questioning.

When the police question you, their conduct is governed by a set of rules called the **Judges’ Rules**. These are not legally binding. Even where they are not obeyed a magistrate or judge can allow your statement to be used as evidence once she/he believes it was made voluntarily. The main provisions are as follows:

1. A police officer can question you, whether you are suspected of an offence, if she/he thinks she/he can get useful information from you. She/he can do this without arresting you if you have not been charged with an offence or informed that you may be prosecuted for it. (**Rule 1 of the Judges Rules**)

2. **First caution:** As soon as the officer has reasonable grounds for suspecting that you have committed the offence, she/he must caution you as follows: "You are not obliged to say anything unless you wish to do so but what you say may be put in writing and used as evidence." **(Rule 2 of the Judges Rules)**
3. **Second caution:** Another caution should be given when you are charged or told that you may be prosecuted for an offence. You should be asked if you wish to say anything and told that you need say nothing, but whatever you do say may be taken down in writing and used as evidence. Generally, no questions should be put at this stage unless their purpose is to prevent harm being done to other people or to make clear the meaning of answers or statements already made. If such questions are to be asked you should be given a third caution. **(Rule 3 of the Judges Rules)**
4. **Statements**
  - (a) If you are questioned or decide to make a statement after being cautioned, a record should be kept of the time and place of the questioning, who was present; and what refreshments were given. Alcohol must never be given. **(Judges Rules Appendix B (1) (b))**
  - (b) Questions and answers should be recorded in full. The record should be signed by you, or if you refuse, by the officer questioning you. Answers can be used as evidence of whether you sign the record. There is no such thing as an off-the-record statement. **(Rule 3(b) of the Judges Rules)**
  - (c) Any statement you make after being cautioned should be written on the proper form though you may decline to put an oral statement into writing. Police officers should only use their notebooks when there are no forms available. **(Judges Rules Appendix B (1) (a))**
  - (d) If you make a written statement, you must do so without prompting and in your own words, or you can dictate it to a police officer and you will then be asked to sign it. If you refuse the officer must do so.
  - (e) If an officer writes your statement, she/he should write down your words and not translate them into "police talk." **(Judges Rules Appendix B 1 (c) )**
  - (f) You must not be led to believe that any statement you make can only be used against you: if you are innocent this may prevent you from making a statement which might help clear you of the charge.

5. You should be told what rights and facilities are available to you. Notices saying what these rights are should be clearly displayed in the police station and drawn to your attention. **(Rule 7(b) Judges Rules)**
6. Reasonable arrangements should be made for your comfort and refreshment. Whenever possible you and the officer questioning you should be seated. **(Judges Rules Appendix B (3))**
7. Questioning of children. As far as possible, children under 17, whether they are suspected of a crime or are only being questioned as witnesses, should only be interviewed in the presence of a parent or guardian, or if these are not available, in the presence of someone who is not a police officer and who is of the same sex as the child. A child should not be arrested or questioned at school if this can be avoided: if it is essential to do so, it should be done only in the presence of the head-teacher, or her/his nominee, with her/his consent. **(Judges Rules Appendix B (4) )**

### Voluntariness

Any statements made by you should not be used in evidence unless the court is convinced that they were made voluntary **(paragraph (e) Judges Rules)**. The prosecution must prove that this is so.

If inducements (e.g., “We can make it easier for you if you confess”) or threats (e.g., “We won’t give you bail until you make a statement”) are made to you while you are being questioned, your statement will not be considered voluntary.

But remember that even if the Judges’ Rules were not followed a magistrate or judge can still decide that your statement was made voluntarily.

### Some advice

1. Never rely on a police suggestion that a confession will make things easier for you.
2. Try to ignore all threats and inducements to make a statement if you don’t want to or make a confession if you are innocent or to sign a statement that you have not given.
3. If the police question you at your workplace, you should get in touch with the local representative of your trade union or professional organization at once. If the offence has nothing to do with your place of work, you should refuse to discuss it in the presence of your employer.



# Bail

## What is bail?

Bail is money paid and or property lodged as security to ensure that a person charged with a criminal offence appears for her/his trial. When bail is lodged the person is released from police custody.

## When Is Bail Available?

Bail is granted at any time, both before and during trial.

Bail is not available to persons charged with murder, treason or some narcotics offences.

When bail is available it may be granted at the police station (while investigations are being carried out), by a magistrate or by a judge of the High Court.

## Station bail

If a person has been arrested and taken to a police station and the officer in charge decides that the offence is not of a serious nature, she/he can grant bail. **(section 4 Bail Act 2022)**

It may be a condition of bail that the person reports to the police station when required.

When bail is granted, a record is made of it and a receipt given to the person paying bail. The bail money &/or property will be returned either when the police withdraw the matter, or the person bailed is charged and appears in court.

## Court bail

A person charged with a criminal offence can be granted bail by a magistrate or judge with or without an application for it having been made **(section 6 Bail Act 2022)**.

An application for bail can be made by the attorney-at-law for the accused or defendant before she/he makes her/his first appearance in court.

Bail can be granted to the accused upon her/his own recognizance or bond **(section 6 Bail Act 2022)**. This means that no money or property must be lodged but the accused must sign a recognizance or bond by which she/he promises to come back to court for trial.

Bail can be granted with conditions for example, you lodge your passport with the court or the police or that you report to a police station every Friday at 9:00 am.

If there is any doubt about whether the accused will come back to court, she/he will be asked to provide one or two sureties. A surety is a person who signs a recognizance or bond stating that she/he will ensure that the accused attends court on the date set for trial. The surety provides some security to the value of the amount fixed by the magistrate or judge. The security can be money or title to land. A surety is also called a bailor.

If bail is refused by the magistrate a further application for it can be made to a judge of the High Court.

An application can also be made to a judge to reduce the amount of bail fixed by a magistrate. The amount of bail should not be so high that the accused will not be able to afford it. This amounts to a refusal of bail.

#### **Paying bail**

The bail is lodged by the bailor at the magistrates' court registry, or the Supreme Court Registry, and a receipt is issued. The receipt must be kept until the trial is ended and then presented to the office or registry so that the bail can be recovered.

#### **Renewal of bail**

Normally it is only at the end of a trial that bail can be recovered. But if a bailor wishes to withdraw her/his bail before the case concludes, and there is someone else willing to become a bailor in her/his place she/he can appear in court on any day and ask to withdraw. If a bailor wishes to exchange bail lodged for alternative security, she/he is permitted to do so.

Bail is security only for as long as a trial lasts. So, if there is a preliminary enquiry in the Magistrates' Court and the accused is committed to stand trial in the High Court of the Supreme Court of Judicature, bail has to be renewed.

When bail is renewed, the bailor will have to sign the recognizance again. When committing the accused to trial in the High Court of the Supreme Court of Judicature the Magistrate will state in open court whether the same or a different sum of bail will apply.

**Forfeiture of bail**

If an accused person fails to attend court for trial her/his bail is likely to be forfeited, i.e., the bailor will lose her/his money or property.

If no reasonable explanation for the accused's absence is given to the court, a warrant will be issued for her/his arrest and an order for forfeiture of bail made.

If you are to act as a bailor, the accused is technically placed in your custody. If she/he does not attend court, it is your responsibility to give an explanation to the court or risk the loss of your money or property.

If you think the person, you have bailed will not turn up at court; you can protect yourself by arresting her/him or asking the police to do so. Once the accused has been arrested you can ask to be relieved from this obligation.

## Drugs & The Law

The laws of Guyana relating to Narcotics are found in the **Narcotic Drugs and Psychotropic Substances (Control) Act, Cap 10:10** and **Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Act 2022**.

**A large number of offences connected with the Possession of, Trafficking in and growing of Narcotic Drugs. There are many kinds of Narcotics, including Opium, Heroin, Cocaine and Cannabis.**

### **When can the Police arrest?**

- You can be arrested without a warrant by any police officer who reasonably suspects that you have committed, attempted to commit or are about to commit any offence under the Act.
- You can be stopped and searched by any police officer who reasonably suspects you of being in possession of a narcotic.
- Your car or other means of transport and any person in it can be stopped and searched by any police officer who reasonably suspects that it is being used to commit any offence under the Act (Section 82).
- The police can obtain a warrant to search your home or other property and everyone in it or who has just left if they reasonably suspect that evidence of dealings in narcotics can be found there (Section 83).
- The search can be carried out by the police officer named in the warrant with such help as she/he thinks reasonable at any time or times within a month from the date of the warrant.
- Any police officer can by her/himself or with such help as in her/his opinion is reasonable, enter and inspect land without a warrant if she/he reasonably believes that it was or is being or is about to be used to grow cannabis, coca plant or any other prohibited plants.
- A warrant can be obtained to search for any property which can be forfeited.

The police can seize any narcotic and any property (e.g., your car) which is thought to be evidence of an offence under the Act.

Evidence can be admitted in court even if it was obtained during an illegal search or by a trick. Reasonable force can be used- Section 6

### **Penalty**

- If a person is found guilty of possessing 15 grams of Cannabis or less, the penalty is Mandatory Counseling. It does not matter if you plead guilty or not guilty, the only penalty is Counseling. How many hours of Counselling or Community Service per Day- 3 hours!
- Between 15- 30 grams, the penalty is community service. This is a long way from the Mandatory three years that was given to possession over 15 grams. The current law states if you plead guilty or found guilty for possession between 15 and 30 grams of Cannabis the punishment is community service for six months. If there is a substance that is not Cannabis but it was held out to be Cannabis the punishment is three months of Community service. **Section 72**
- Over 30 grams of Cannabis? - the penalty will be imprisonment or a fine (if you are a first-time offender and the quantity is low the Magistrate has the power to order a fine).

### **NOTE:**

What if you refuse or breach the order for Counseling or Community Service?

1. You may be fined \$250,000.00 (two hundred and fifty thousand dollars) and still ordered to complete the hours.

### **Drug Treatment Court**

There is an Adult Drug Treatment Court and a Juvenile Drug Treatment Court.

The Drug Treatment Court was established in October 2019 and it caters for adult persons with substance abuse/misuse disorders who commit non-violent offences.

These courts also give an alternative to Prison Life where participants are subject to various rules and requirements that were established to help reform and reintegrate them into society after graduation from the programme. The programme lasts for a minimum of 13 months.

**The stages of the Drug Treatment Courts**

The first stage (choice) and the second stage (challenge) are for approximately 90 days. The third stage (change) lasts for approximately 120 days, while the fourth stage (continuing care) lasts for approximately 90 days. After completion of all of the stages, graduation from the programme is based on a positive recommendation by the approved treatment providers.

The Drug Treatment Courts takes a team approach and comprises professionals that collaborate to work with each participant to provide feasible solutions in the interest of the participant.

The team includes Magistrate, State Counsel, Defence Counsel, Police Officer, Probation Officer, Substance Misuse Treatment Provider, Case Manager, Mental Health Specialist, and any other person selected by the DTC team.

At meetings each participant is evaluated by the team to check their progress. Remember if you commit a non-violent offence and you decide to participate in the Drug Treatment Court you face no prison time. Once you complete all the stages, which require sobriety and routine testing, and your matter is dismissed and you are freed.

## Licences

There are several activities which, in order for them to be lawful, require licencing. The following are some activities for which licences must be obtained.

**The Laws of Guyana relating to obtaining a licence are:**

- 1) **Motor Vehicle and Road Traffic Act, Cap 51:02**
- 2) **The Tax Act, Cap 80:01**
- 3) **The Auctioneers Act, Cap 91:07**
- 4) **Money Lenders Act, Cap 91:05**
- 5) **Intoxicating Liquor Licensing Act, Cap 82:21**
- 6) **Firearms Act, Cap 16:05**

### **Motor vehicles & drivers**

The law stipulates that all motor vehicles and electronic cycles must be registered and licenced. Charges are renewed for road licences annually. Licence fees are due on the 1<sup>st</sup> day of January, of each year or at the time of registration of a new vehicle. It is an offence to drive an unlicenced vehicle.

An application for a road licence must be made to the licencing officer at the Guyana Revenue Authority. When applying for a licence-certificate of registration, a certificate of fitness and at least third-party insurance for the vehicles must be produced (**Section 17, Cap 51:02**).

The licence specifies the purpose for which the motor vehicle is licenced. It is an offence to use the vehicle for purposes other than for which it is licenced as the licence would be void. A licence issued for one vehicle cannot be used in respect of another vehicle. The licence usually states the registration number of the vehicle (**Section 18, Cap 51:02**).

If a vehicle licenced in one condition or for certain purposes is altered or its use is altered, the licence holder must surrender that licence. The fee payable would be the difference between that paid already and the higher fee.

### **Transfer (Section 20, Cap 51:02)**

Should the licence not be transferred to the new owner, the new owner must ensure that the vehicle is licenced.

### **Drivers (Section 28, Cap 51:02)**

It is against the law to drive a motor vehicle on a road without holding a valid driver's licence. It is also an offence to employ a person to drive who does not have a valid driver's licence. At all times a driver

must be able to produce, on request by a police officer, her/his valid driver's licence.

**Provisional licence (Section 25- Cap 51:02)**

A provisional licence must be obtained during the course of a person being trained to drive a motor vehicle. A provisional driver should always be accompanied by a registered driver.

**House Agent**

In accordance with the **Tax Act**, every person, other than an Auctioneer, who acts as, or carries on the business of, a house agent or commission agent for the sale of house, tenements, or immovable property, shall take out an annual licence for so doing and pay for the licence.

**Money Lenders and Pawn Shop Licence**

In accordance with the **Tax Act**, and the **Money Lenders Act** - every person whose business is that of money-lending or who advertises or announces himself or holds himself out in any way as carrying on that business. It also is described as everyone who keeps a bonded warehouse appointed for the receiving and securing of goods the duties whereon are unpaid shall take out an annual licence for the warehouse and pay for the licence.

**Petrol Pump Licence (Gas Station)**

Every person who keeps a petrol pump or filling station for the purpose of sale of petrol shall take out an annual licence for each pump.

**Trade Licences - Internet Café, Lumber Yard, Supermarket, Gas Station, Pharmacy, Food Establishment, etc.**

In accordance with the **Tax Act** - every person who occupies any store, shop, floating shop, room, stall, shed or yard, or part of such place in any part of Guyana both urban and rural shall take out a trade annual licence.

**Cinema Licence /Video Club**

Every person who operates a cinema or a video club licence shall take out an annual licence.

**Butcher Shop Licence**

In accordance with the **Tax Act** - any person who occupies store, shop, shed, stall, yard or part of any such place where meat is sold, bartered or exposed or offered for sale, shall take out an annual licence.



**Insurance Licence (Fire & Life)**

In accordance with the **Tax Act**- every person or company carrying on any life, fire and accident insurance business in Guyana, and any person or company that acts in Guyana as an agent of a person or company carrying on any insurance business, shall take out and annual licence.

**First Class Off – Licence**

In accordance with the **Intoxication Liquor Licensing Act** - a first class licensing shall authorize the holder thereof to store in bulk, mix and blend spirituous liquor in the licensed premises and to sell therein spirituous liquor, wine or malt on the premises. To import and sell spirits in a bond.

**Second Class Off – Liquor Licence**

In accordance with the **Intoxication Liquor Licensing Act**, a second class licensing shall authorize the holder thereof within the limits specified to sub-paragraphs (i), to keep and sell on the licensed premise spirituous liquor, wine or malt liquor, not to be consumed on the premise, but not to store in bulk, mix or blend such spirituous liquor.

**Firearm licence**

No person shall purchase, acquire or have in her/his possession any firearm, ammunition or quantities of ammunition in excess of those authorized, unless she/he holds a firearm licence in force at the time (**Section 16, Cap 16:05**). If a person does not comply, she/he would be guilty of an offence and would be liable on conviction to a mandatory term of imprisonment and a fine. If a person does not comply with any conditions stated in the licence she/he would be guilty of an offence and would be liable to a fine and to imprisonment. An application for a licence has to be made to the officer in the district in which the applicant resides. A police constable may demand the production of a firearm licence from any person he believes to be in possession of a firearm or ammunition.

**Firearm dealers**

In order to be a firearms dealer a person must be registered as such and must be issued with a certificate of registration by the Commissioner of Police (**Section 24, Cap 16:05**). All licencing and registration are done pursuant to the law.

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