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## FOREWORD

The Guyana Association of Women Lawyers (GAWL) launched **The Law and You Leaflet Project** in July, 1992. The project was successful in that 500,000 leaflets dealing with 31 topics in the law were distributed all over Guyana. The response from members of the public was overwhelming.

Over the intervening years, the GAWL published three booklets titled **The Law and You I**, **The Law and You II** and **The Law and You III** as a continuation of the Leaflet Project. Subsequent re-printing of all three booklets was done periodically and made available for public use. The last reprint of **The Law and You I** and **II** was done in 2009. Since then there have been a number of new pieces of legislation which have been enacted. The GAWL felt that there was a need for a revision of the booklets and decided to condense all the booklets into this new edition - **The Law and You IV**.

Due to limited space some of the topics previously covered will not appear in the new edition. However, pertinent topics have been retained. All the laws have been updated and new legislation have been added. The user-friendly approach of the previous booklets has been maintained so that there will be no difficulty when reading **The Law and You IV**.

The GAWL hopes that members of the public and various institutions will take advantage of **The Law and You IV** which will be available throughout Guyana free of cost. We encourage you to utilize the booklet in learning more about the laws of Guyana and how they affect you.

The GAWL acknowledges all of its past and current members who worked on various editions of the **The Law and You** booklets either as editors or contributors since its first publication.

**Guyana Association of Women Lawyers**

**2011.**

# REGISTRATION OF BIRTHS

## **Time for registration**

The birth of every child born in Guyana must be registered within 21 days of the birth.

## **Who must register?**

Where the parents are married the father or mother is required to provide particulars to the registrar of births at the nearest registration center of the district in which the birth took place.

The registrar completes a registration form, which the parent then signs.

If, for any reason, neither the father nor the mother is able to register the birth, a nurse must register the birth.

If you live in a remote area you do not have to go to a registration center but can send the particulars of the birth in writing to the registrar at the nearest registration center. This is usually the community health centre.

## **Registration after 21 days**

If the birth is not registered within 3 months of the baby being born or within 9 months if you live in a remote area, you can go to a registrar and give the particulars for her/him to complete a registration form that you will then sign.

However, if more than 12 months have passed since the baby was born the birth can only be registered with the authority of the Registrar General.

## **Particulars to be given**

The information which you must give to the registrar who then enters them on the registration form includes: when and where the birth took place, the names, sex, race, weight and length of the child and details of the mother and father.

The name and surname of the mother have to be given as they were at the time of the birth as well as her maiden surname, her address, race, marital status, age, occupation and education. If the parents are married the registrar will want to know the names, race, age, occupation and education of the father.

## **Children born out of wedlock**

If the parents are not married to each other the mother does not have to give details of the father. That part of the registration form giving particulars of the father may be left blank. Particulars of the father can only be entered at the joint request of the mother and the father, in which case both will sign the registration form. A father's name cannot be added to the birth register after the birth is registered.

Entry of the father's name on the registration form is evidence of paternity for the purpose of maintenance proceedings and inheritance of property and can also be evidence of adultery if the mother or father is married to someone else at the time.

## **Choice of name**

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 but it is usual for a child born in wedlock or whose parents are living together to take the surname of the father.

The mother of a child born out of wedlock can give the child any forenames and surname she chooses, even the father's surname without his consent.

Parents usually choose a child's forenames when registering the birth which may be confirmed later by religious baptism.

It is better to give the child a name at the time the birth is registered, since in some cases a Court Order will be required to insert a name at a later date.

Whilst there is no law against using different forenames and/or surnames at different times for different purposes this can be confusing for legal purposes. Anyone can change her/his forename and/or surname at any time simply by starting to use another name. But it is usual to make a deed poll (in case of a child the deed poll is made by a parent or guardian) formally evidencing the change of name to avoid difficulties in obtaining passports and school registration.

### **Re-registration upon marriage of parents of a child born out of wedlock**

If the mother and father subsequently marry they can apply to the Registrar General within 3 months of the marriage to have the birth re-registered.

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

A registrar may only correct minor clerical errors made on a registration form. Any other errors may only be corrected with the written authority of a magistrate.

### **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 date of registration.

A birth certificate is not issued at the time of registration but must be applied for through the post office 30 days after registration.

## **MAKING A WILL**

### **What is a will?**

A will is a document, which sets out what you want to happen to your property, called your ESTATE, after you die.

You do not have to make a will but if you die without making one then the law and not you will determine what happens to your estate.

A person who makes a will is a TESTATOR or TESTATRIX and dies TESTATE. If you do not make a will you die INTESTATE and the laws relating to INTESTACY will apply to the distribution of your estate.

In a will a testator usually appoints someone to administer her/his estate. That person is called an EXECUTOR or EXECUTRIX. More than one executor can be appointed.

When someone is appointed to administer an estate, that person is called an ADMINISTRATOR or ADMINISTRATRIX

Those who benefit under a will by receiving a gift or property, called a LEGACY are known as BENEFICIARIES.

## **Valid Wills**

For a will to be valid, that is legally binding, there are several conditions that have to be met.

1. A will must be in writing.
2. You must have the capacity to make the will, that is, you must be over 18 years, of sound mind and not acting under the influence or coercion of anyone else.
3. The will must be signed or acknowledged by you unless you are too ill or frail then someone else in your presence and on your instructions can do it. The signature must be at the end of the will as everything underneath it will be invalid. Anything in the nature of a signature will do, for example a thumbprint or initials or a mark. It is advisable that a thumbprint be witnessed by a Justice of the Peace.
4. Two persons must witness the signing of the will. They have to be able to see your sign but do not have to know that what they are witnessing is a will or what is in it. A beneficiary to a will should not be a witness.
5. A will must be REVOCABLE, that is you must be able to cancel it later if you wish.
6. You can dispose of property by sale or gift before you die. If you die before the transaction is complete your executor or administrator can complete the transaction after your death. If you make a gift of property it will have to be completed before you die as it cannot be completed after your death.

### **Here is an example of a valid will:**

LAST WILL AND TESTAMENT of I, Lily Small of 13 Old Street, Newtown, being of sound mind and body hereby revoke all wills formerly made by me.

I appoint Fred Persaud of 25 High Street, Newtown and James Brown of 18 Main Street, Newtown to be my executor(s) and direct that all my debts and funeral expenses be paid as soon as is convenient after my death.

I GIVE AND BEQUEATH to my sisters Joan and Cherry Small my jewellery and to my brother Alfred Small my stereo set. The remainder of my property is to go to my daughter Alice Small.

Signed by the said testatrix in the presence of us, present at the same time, who at her request and in her presence and in the presence of each other have subscribed our names as witnesses.

Lily Small

1. S. Hope, 7 Stone Road, Newtown.
2. R. Field, 54 Sand Lane, Newtown.

### **Altering a will**

A will only takes effect upon death. If after you have made a will you wish to make some changes to it you can do this by making a CODICIL. A codicil has to be executed in the same way as a will and once it has been executed it becomes part of the will.

### **Canceling a will**

You can REVOKE, that is cancel, a will in 3 ways:

1. By intentionally physically destroying it, such as burning it or tearing it up.
2. By a later will or codicil that makes it clear that the earlier will is cancelled, or by disposing of all your property.
3. By marriage unless it is made with marriage to a particular person in mind.

Unless it has been physically destroyed you can REVIVE (make it valid again) a revoked will.

A will once made should be kept in a safe place. A testator should not give copies of a will to persons. It is recommended that the original will be deposited in the Supreme Court Registry, Probate Division, for safe keeping. The will can only be opened after you die.

## **INTESTACY**

### **Dying intestate**

When a person dies leaving a WILL that person is said to die TESTATE and her/his property or ESTATE as it is called, is dealt with according to the wishes of the deceased as set out in the will.

Where, on the other hand, a person dies without leaving a will that person is said to die INTESTATE and as there is no will containing the deceased's wishes what happens to her/his estate is governed by the INTESTACY RULES.

### **Summary of Intestacy Rules**

- A. Where there is a widow or widower, the position is as follows depending on whether there are any children:

	CHILD/CHILDREN	
	1/3	2/3
widow/widower		child/children
	NO CHILD/CHILDREN	
	1/2	1/2
widow/widower		parent(s) or if no parent(s) alive then sister(s) and/or brother(s) or if none or not alive then grandparent(s) or if none alive

then aunt(s) and/or uncles. If there is none of the above then the widow or widower gets all

- B. Where there is no widow or widower, the position is as follows depending on whether there are any children:

**CHILD/CHILDREN**

All to child/children.

**NO CHILD/CHILDREN**

All to parent(s) or if none alive sister(s) and/or brother(s) or if none or not alive aunt(s) and/or uncle(s).

- C. If there is none of the above the estate goes to the State.

Note that:

1. "child" includes child born out of wedlock;
2. relatives of the half blood rank equally with those of the whole blood; and
3. A beneficiary can **RENOUNCE BY DEED** her/his share of the estate in favour of another beneficiary.

**Dealing with an intestate estate**

Before an intestate estate can be dealt with one or more persons, called ADMINISTRATOR(S), have to be appointed by the High Court to be responsible for the administration of the estate. The document appointing administrator(s) is called LETTERS OF ADMINISTRATION.

It is usual for the person(s) who is the major beneficiary of the estate to apply for letters of administration. If the beneficiary does not want to administer the estate, the Public Trustee may be asked to do so. If someone is owed money by the estate she/he can apply for letters of administration if no beneficiary has done so.

Only persons with legal status e.g. a party to a legal marriage may apply for letters of administration. A common law spouse may not apply. If there are children of the union, the children, if over age, may apply.

## **PROBATE OR ADMINISTRATION OF AN ESTATE**

**Grants of representation**

Before personal representatives can deal with an estate they must obtain a grant of representation from the High Court authorizing them to act.

The grant issued to executors is called a Grant of PROBATE while administrators are granted LETTERS OF ADMINISTRATION. If an executor or intended administrator is unable to apply she/he can appoint someone to do so by Power of Attorney

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

Before a grant of representation can be issued the following things must be done:

1. An OATH and STATEMENT OF ASSETS AND LIABILITIES must be delivered to the Commissioner of the Guyana Revenue Authority. The statement is a list of the assets and liabilities of the estate (i.e. property owned by and debts owed by the deceased when she/he died). The oath is a sworn statement confirming that the contents of the inventory are correct.

Other documents must be delivered including:

- (a) a copy of the death certificate;
- (b) the will, if any;
- (c) a copy of the transport/title to immovable property;
- (d) certificates of valuation of the assets;
- (e) 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
- (f) a Power of Attorney, if applicable.

Estate duty was abolished in 1991 but if the gross value of the estate (i.e. the total value of the assets) is more than \$100,000.00 a PROCESS FEE of ½ percent of the gross value is payable. For example, if the gross estate is worth \$200,000.00 the process fee will be \$1,000.00.

When the process fee, if any, has been paid a certificate will be issued by the Proper Officer appointed by the Commissioner of the Guyana Revenue Authority.

2. Once the Commissioner of the Guyana Revenue Authority's certificate has been obtained the application for Probate or Letters of Administration can be made to the High Court.

The following documents must be filed with the application:

- (a) the Commissioner of the Guyana Revenue Authority's certificate;
- (b) the death certificate;
- (c) the will, if any;
- (d) a list of the assets and liabilities as accepted by the Commissioner of the Guyana Revenue Authority;
- (e) the executor's or intended administrator's oath. 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
- (f) a Power of Attorney, if applicable.

## **Duties of executors and administrators**

Once a grant of Probate or Letters of Administration has been issued the personal representatives must:

- (1) collect all the assets of the estate including money owed to the deceased;
- (2) 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;
- (3) at the end of the 3-month period pay off all debts, 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 the High Court.

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

If personal representatives fail to carry out their duties properly they will be personally liable to the beneficiaries.

If a personal representative is unable or unwilling to carry out her/his duties, she/he can renounce the grant. A new person will have to be appointed to carry out those duties.

## THE FAMILY AND DEPENDANTS PROVISION ACT

The purpose of this Act is to prevent family members and dependants from being left without proper means of support when the person upon whom they were dependant dies.

Before the Act a person could leave her/his property by will as she/he chose. Family members and dependants could be left with nothing. If a person died intestate, which is without leaving a will, her/his property would go to the nearest relatives regardless if others would be left in need. This led to great hardship.

Under the Act family members and dependants can apply to the High Court for financial provision to be made for them out of the property left by the deceased, on the ground that what, if anything, they are to get under the will or the law relating to intestacy 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 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 dependant (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 (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.

## **GETTING MARRIED**

### **Who can get married?**

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

If either party is under 18 the consent of her/his parent(s) or guardian(s) must be obtained. If consent is refused an application can be made to the High Court for leave to marry.

### **Who cannot get married?**

Marriages between certain persons are forbidden and any such marriage celebrated will be void (without any legal effect). A marriage will be void if:

- (a) either party is already married to someone else and therefore is not single;
- (b) either party is under 16;
- (c) both parties are of the same sex;
- (d) the parties are certain kinds of blood relations, e.g. parent & child; grandparent & grandchild; brother & sister of the whole or half blood; niece & uncle; nephew and aunt;
- (e) the parties are related by marriage, e.g. a woman & 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 compiled with.

### **Formalities before marriage**

Before a wedding can take place banns must have been published or a minister's license or superintendent registrar's certificate obtained. **Note** however, that a marriage officer without banns, a license or certificate can perform a marriage if one of the parties is at the point of death.

1. Banns must be published in a church registered for that purpose in the marriage district in which the parties live on 3 Sundays during a period of not more than 3 months before the wedding. Publication must be by a minister of the Christian religion who is a marriage officer or someone acting under the minister's control. If the parties live in different marriage districts banns must be published in each district.  
At least 2 days before the time required for first publication the parties must give the minister a written notice containing required information.
2. A minister's license (called a marriage license) must be applied for at least two days before it is required. The application is by petition to the Minister of Home Affairs containing the required information. All relevant documents (birth certificates to prove age; death certificates and/or decrees absolute of divorce or nullity to prove single status) must be produced and a fee paid. If an objection is made to the marriage the Minister of Home will decide the issue.
3. A superintendent registrar's certificate is obtained upon notice given to the superintendent registrar of the marriage district in which the parties have lived for the past seven days or more. If the parties live in different districts they must each give a separate notice. The notice must contain the required information and all relevant documents must be produced. The particulars are entered in the Marriage Notice Book that may be inspected by anyone at any reasonable time. The superintendent registrar must clearly publish a notice of the marriage outside her/his office. Once the notice has been up for twenty-one days the superintendent registrar(s) (if more than one marriage district) will issue a certificate to any party who gave notice to her/him upon payment of the required fee.

If anyone makes an objection to the marriage within the twenty- one days period the superintendent registrar will refer the objection to a judge of the High Court who will decide the issue. In the meantime no certificate will be issued.

The publication of banns, minister's license and a superintendent registrar's certificate becomes void if the marriage doesn't take place within 3 months of last publication/issue. Banns will have to be published all over again or a new license or certificate obtained before the marriage can take place.

### **The ceremony**

A superintendent registrar or a marriage officer may perform 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 two or more witnesses, apart from the marriage officer or superintendent registrar and the consent of each party to take the other as husband or wife must be clearly stated 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**

As soon as a marriage has taken place it must be registered in the marriage register book kept by the marriage officer or superintendent registrar who performed the ceremony. The entry contains details of the parties and the marriage.

A duplicate original entry is also made on a separate sheet of paper. This will later be sent to the Registrar General of Births & Deaths. Both parties must sign both originals.

A certified copy of the entry is given to the parties. This is called the marriage certificate and is used as evidence of the marriage, e.g. in divorce proceedings. Certified copies can be obtained from either the Registrar General or the marriage officer or superintendent registrar who has custody of the marriage register book containing the original entry. The parties' names, date and place of marriage must be given.

### **Change of name and title**

Although a woman has traditionally taken her husband's surname on marriage, there is no legal requirement that she do so. She is perfectly free to keep her own name if she wants. If she decides to take her husband's surname she can keep it after the marriage ends, whether on death or divorce.

Instead of being called "Miss" before marriage and "Mrs." after, more and more married and unmarried women are adopting the title "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) Death of a spouse; or
- (b) A grant of Decree Absolute of divorce or nullity by the High Court.

# **DIVORCE**

## **Grounds for divorce**

In Guyana divorce is still based upon the court being satisfied that one of the parties to the marriage is at fault. Divorce by consent is not allowed.

### **The three main grounds for divorce are:**

1. Adultery
2. Cruelty
3. Malicious desertion. When one party has left the matrimonial home without either a good reason or the consent of the other party, or has treated the other party so badly that she/he has been forced to leave. This is the ground most often used.

## **The petition**

The party who wants the divorce (the petitioner) files a petition in the High Court asking for a decree of divorce against the other party (the respondent) and setting out the ground on which the petition is based.

## **Service**

The petition must be served upon the respondent. There are two types of service:

1. **Personal Service:** The petition is served by a marshal of the Supreme Court or an authorized lawyer's clerk. The respondent must be pointed out to the marshal or clerk by the petitioner or someone else who knows the respondent.
2. **Substituted Service:** By either registered airmail post when the respondent lives abroad and the petitioner knows her/his address, or advertisement in a newspaper in Guyana or the country where the respondent lives when the petitioner does not know her/his address.

## **Defended divorce**

A divorce is defended when the respondent enters an appearance and files an answer or answer and cross prayer. The respondent may not only ask that the petition be dismissed but that she/he is granted a divorce instead.

A defended divorce takes much longer to come up for hearing than an undefended divorce and costs more in lawyer's fees.

## **Undefended divorce**

If the respondent does not enter an appearance or file an answer the petition will be put on the undefended list for hearing.

### **The hearing**

If the petition is undefended the petitioner goes into the witness box and testifies as to the content of the petition. If the judge finds that the grounds on which the petition is based have been proved a decree nisi will be granted.

If the petitioner is abroad and cannot return to Guyana for the hearing a special application can be made for her/his evidence to be given by affidavit (a sworn statement in writing).

If the petition is defended each party gives evidence and is cross-examined by the lawyer for the other party. The same applies to any witness each party has. The judge decides which party has proved her/his case and either grants a decree nisi or dismisses the petition.

A certified copy of the marriage certificate must be handed in at the hearing as proof that the parties were legally married.

### **Decree absolute**

Six weeks after the decree nisi has been made the petitioner can apply to have it made absolute. If the petitioner does not apply the respondent can do so nine weeks after the decree nisi.

The Attorney-General or other interested party can intervene to stop the decree nisi being made absolute on the ground that the nisi was improperly obtained, but this very rarely happens.

### **Maintenance and custody**

Orders for maintenance of a wife and for maintenance and custody of children can be applied for at any time before decree absolute. It is better to have arrangements as to maintenance and custody finalized and made part of the order nisi. (See Custody and Maintenance sections.) A divorce order may not be granted until issues in relation to the custody and welfare of the children are dealt with.

### **Judicial separation**

A decree of judicial separation can be obtained on basically the same grounds as a decree of divorce. It frees the party obtaining it from the obligation to live with the other party. It is usually applied for by people who have a religious objection to divorce. A decree of judicial separation does not end the marriage, so neither party can remarry.

### **Nullity**

When a marriage is VOID or VOIDABLE the party not at fault can apply for a decree of nullity.

A void marriage has no legal effect at all and a decree of nullity simply confirms this. A marriage will be void if:

- (1) Either party is under 16 years old; or
- (2) One of the parties is already legally married to someone else.

A voidable marriage is valid unless and until a decree of nullity is made.

# THE MARRIED PERSONS PROPERTY ACT

The High Court can make any order (including an order for sale) in relation to any property in dispute between a husband and wife.

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

No, but if a couple is not legally married they must:

- (a) have lived together; and
- (b) both be single, i.e. widowed, divorced or not legally married to someone else.

## **What can I get?**

If you make an application in respect of property owned by your wife/husband what you can get depends upon:

- (a) how long you have lived together;
- (b) whether or not you have worked outside the home;
- (c) 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 any contribution made by looking after the home and caring for the family;
- (d) 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
- (e) 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.

## **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 husband buys property and puts it in your name it is presumed that he has given it to you.
  5. If your wife buys property and puts it in your name it is presumed that she is still the real owner.
  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.

**N.B.**

- (1) 4 & 5 only apply to legal marriages. The others apply whether or not the parties are legally married.
- (2) The presumption at each of 4 & 5 can be negated by evidence of a different intention, e.g. that the property was to be jointly owned.
- (3) Remember that to be able to bring a claim under the Act you have to be legally married or be single and have been living with a single man or woman.
- (4) Both parties to a legal marriage have the right to live in the matrimonial home as long as the marriage lasts whether the home is owned by one or both of them.

## STATUS OF CHILDREN ACT

This Act provides that all children, whether born of natural parents, adoptive parents and whether born in or out of wedlock, have equal status and rights. It modernizes procedures for determining paternity and who a child's parents are by allowing the court to order parentage testing procedures and to use DNA evidence. It allows for presumptions of paternity and parentage to be decided due to 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 Act provides for applications for declarations of parentage to be made to the High Court before a judge. It does not affect rights vested or determined before it came into force.

**It 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 domiciled in Guyana.

Where general words such as 'children' and 'issue' are used in a will by which a person leaves their property to family and others when she/he die, these words are now to be interpreted as applying to all children whether born in or out of wedlock.



### **Presumptions of parentage**

The Act provides for situations where presumptions of paternity and parentage are to be made so that the father or parents of a child would be known. A person would be presumed to be the father or persons would be presumed to be the parents of a child where:

- i) a person is married to the child's parent;
- ii) there has been a formal acknowledgement of paternity;
- iii) there has been cohabitation 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.

Also, where a woman becomes pregnant by a fertilization procedure, the man with whom she is cohabiting is presumed to be the father and she is presumed to be the mother. This presumption applies whether or not all of the sperm used was provided by the man, but the man must have 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.

## **CUSTODY**

### **What is custody?**

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

Actual 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 the right to see the child.

### **Who is entitled to custody?**

The mother or father (whether natural or adoptive), the person who acknowledges the child as a child of their family (who could be a step-parent) and any person appointed by the court each has parental rights and as such is entitled to custody of a child. The mother and father of a child are equally entitled to custody of the child.

Where two or more persons (which includes parents) have parental rights in relation to a child each of them may exercise that right separately without the consent of the other.

This applies 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.

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 High Court for a decision. In deciding such disputes the court has to consider the child's welfare as the first and most important consideration. If one parent dies the surviving parent will have all parental rights unless a

guardian has been appointed by the deceased parent, or by the court, to act jointly with the surviving parent.

When a child is adopted all parental rights pass from the natural 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 for custody of the child. That person must be at least eighteen years of age and no more than fifty years older than the child.

### **Agreement about custody**

Parents who are getting divorced or are separating can continue to hold parental rights jointly without any order of the court. Where the children are to live and how often they are to visit the other parent can be informally agreed.

### **Disputes over custody and access**

Disputes over custody and access or contact can be taken to the court for a decision by either or both parents or by any other person who has parental rights by virtue of an order of the court. A divorce or other court ordered separation may be delayed until issues regarding the welfare of the children are dealt with.

### **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.

### **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 simply order reasonable access and leave it to the parties to make their own arrangements or it may specify what the access or contact arrangements are to be.

Parents can vary access or contact arrangements by agreement or, if there is a dispute, 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 causes difficulties over access or tries to stop it, the other cannot do much about it except return to the court.

## **MAINTENANCE**

A person (both man and woman) has a duty to maintain his/her own child, a child of his or her legal or common law spouse who was born prior to marriage or prior to a union or cohabitation and who has been living with them as a member of the family or any child who is treated as a child of the family. If parents fail to maintain their children the grandparents must do so.

### **Orders the court can make**

The court may make orders affecting the property of the person liable to maintain a child, including the transfer of such property for the benefit of the child, or it may order the person to make a lump sum payments or periodical payments.

The court may also require the person 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.

If there is a dispute as to parentage of the child no order will be made until the issue is resolved. 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.

The court has the power to request information from individuals or organizations in relation to income and other matters pertaining to the person liable to maintain a child.

### **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. It is also an offence to misapply money received for maintenance of a child. The child or the person with whom the child lives can apply to the Magistrates' Court for a maintenance order. The parent will be summoned to appear before a magistrate and can be arrested if she/he does not obey the summons.

If the person summoned as the father of the child (the putative father) says that he is not the father (i.e. 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. 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.

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. 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.

The order is valid until the child is 18 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 on or before the child reaches 18 years old. The child may also apply for a variation of a maintenance order if that child has reached the age of 16 years. Applications for maintenance by a child under 17 years have to be made through a guardian.

A maintenance order made by a magistrate can be appealed to the Full Court but the order will still have to be complied with until the appeal is heard.

### **Enforcement**

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

- (a) attachment, i.e. having the amount due deducted from their earnings;
- (b) 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.

## PROTECTION OF CHILDREN

This Act is intended to give protection to children at risk, children in difficult circumstances and children generally. A child means a person under the age of 18 years whether the person is born in or out of wedlock and who has never been married. A person who has special needs is treated as a child regardless of the person's age.

### **The Childcare and Protection Agency**

This agency has the responsibility for the implementation of policies and decisions in relation to the protection of children. The agency intervenes where children are abused or in unsafe or unhealthy situations or are neglected or abandoned.

### **Protective intervention is needed if a child is:**

- at risk of being physically or emotionally harmed by anyone;
- at risk of being sexually or emotionally abused or exploited;
- abandoned;
- living in a situation where there is 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;
- is exposed to drugs or obscene material or object; or
- denied by the parent(s) essential medical, psychiatric, surgical or remedial treatment that is recommended by a registered medical practitioner or doctor.

### **Duty to report**

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.

**If you are a professional person such as:**

- a health care worker;
- a school principal, teacher, social worker, family counsellor, coach, religious leader, operator or employee of a child care service;
- a police officer;
- an attorney-at-law;
- a member of a non-governmental organization which provides special services for children;
- a person who is entrusted with the care of children;
- a mediator; or
- a 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.

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 the person charged and if the person is found guilty the magistrate may fine or sentence the person to prison.

**Note:** There is no confidentiality in relation to a child who is or may need protective intervention.

**Removal of child**

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.

**Medical treatment of child**

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 permit the child to have.

**Protection intervention hearing**

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.

## ADOPTION

**What is adoption?**

When a child is legally adopted the adopter(s) become(s) to all intents and purposes the child's parent(s) and the natural parent(s) are permanently deprived of parental rights.

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. In deciding whether to make an adoption order, the court considers the welfare of the child as the first and most important consideration.

### **Who can be adopted?**

A person under 18 years of age who has never been married and who lives in Guyana.

### **Who can adopt?**

You can apply to adopt a child if you are:

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

### **Note**

1. A mother or father of a child may adopt a child either alone or jointly with her/his spouse. Spouse includes a single man and 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.
2. If you are married you and your husband/wife should apply jointly. If only one of you applies the other must consent.
3. If you are male you will only be allowed to adopt a female child to whom you are not related in very exceptional circumstances.

### **Who must consent to an adoption?**

1. The parent(s) of the child.
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.
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.
4. The spouse of the person applying to adopt the child.
5. The child if she/he is 12 years or older.

### **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 if the person:

- (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:

- (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 in person to the Childcare and Protection Agency. You 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 the child and of yourself;
- (b) your marriage certificate or decree absolute; and
- (c) death certificate(s) of the parent(s) of the child;

### **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) to take to your lawyer. The duty of the agency is to safeguard the interests of the child. 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. Your lawyer will then file the necessary documents for the adoption with the court.

### **Adoptive 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 wherein an adoptive certificate will be issued which replaces the child's birth certificate and serves the same purpose.

### **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. adoptive parents abuse their parental rights).

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

1. 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; or
2. 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.

If you commit any of the acts above you may be charged and placed before the Magistrates' Court by the Childcare and Protection Agency.

## RAPE AND SEXUAL ASSAULT

The Sexual Offences Act 2010 changes the definition of rape so that any sexual penetration of a person by any part of the body or with the use of any thing or implement without the consent of the person would amount to rape. If a person causes another person to penetrate another person in any way it would constitute rape.

Sexual assault occurs where a person touches another person in a sexual way or causes the complainant to touch the accused in a sexual way; or otherwise indecently assaults the complainant and the complainant does not consent to the touching or the act which would constitute indecent assault and the accused does not reasonably believe that the complainant consents.

The age of consent to sexual activity is now 16 years for both girls and boys.

There are a number of new offences to protect children.

These include:

Causing a child under 16 years to watch a sexual act including an image of sexual activity.

Meeting a child under 16 years following sexual grooming. Sexual grooming occurs when an accused would have met or communicated with the complainant in order to induce or cause them to engage in some form of sexual activity with the person.

There is also an offence of voyeurism which occurs when a person is doing a private act and if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy where the person's genitals, buttocks or breasts are exposed or covered only with underwear; the person is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public.

It is no longer a defence to any of the offences for an accused to say that he or she is married to the complainant or that there is a proposal of marriage in existence.

A special measures direction can be given allowing for the examination of a child witness to be conducted through an interpreter or other person approved by the Court. This person is called "an intermediary". The intermediary would be able to assist the Court to communicate with the child witness e.g. by explaining questions put to and answers given by child.

The Court can remove a person from having authority over a child if it is proved to the Court that an offence under this Act committed against a child has been caused, encouraged or favoured by the child's father, mother, guardian or any other person who has lawful care or charge of the child.

The presumption that a male under 14 yrs is incapable of sexual intercourse is abolished.

Confrontations of complainants with accused are now prohibited.

Generally, the hearings of sexual offences matters are to be in a closed court with the members of the public and media being excluded. There is also to be no publication that would identify a complainant.

### **If you have been raped or otherwise sexually assaulted you should:**

1. Contact the Police;
2. Make a report to the Police as soon as possible after the incident. If you are unable to contact the Police yourself ask someone responsible to make the report for you either by telephoning or going to the police station.



When you go to the police station you should take a friend or relative with you. You will have to give a statement about what happened. You may find telling what happened and answering the police officer's questions difficult but you should try to give as much details as possible. Any witness should also give statement(s).

### **Medical attention**

After you have made a report to the Police you will be sent to a doctor for a medical examination. Some of your clothing may be taken for a laboratory test.

If you are female a woman police officer or other responsible woman should go with you to the hospital or doctor's surgery. If you are male a male police officer should go with you. If the victim is a child a parent or guardian should go too.

You should have a medical examination within 24 hours of the assault.

You must collect a signed medical report from the doctor within 48 hours of the medical examination.

Either you or the police should keep the medical report safely. It will be needed as evidence if the matter goes to court. When the Police have taken your and any other statements they may arrest and charge the attacker. You are not required to recount your complaint in the presence of your attacker unless you wish to do so. Neither are you required to view or be in the presence of the person. A husband could be charged for raping his wife and vice versa. So it is not a defence to any of the offences under this Act to say that one is married or in a relationship.

### **What happens at court?**

The Police will tell you when you should attend court. When the attacker is charged she/he will be taken before a magistrate where a trained police officer will present the case for the prosecution.

It is usual that the case is not heard on the first day and is put off for hearing on another day. The magistrate will announce the date agreed with the prosecutor and the accused's lawyer.

The accused may be remanded in custody or granted bail, i.e. allowed to go free once money or property has been lodged to ensure attendance in court for trial.

A complainant may be allowed to express his/her views and concerns during bail hearings and before the passing of sentence in a manner that is not prejudicial to the accused. Most times a complainant is absent when an accused first appears in court and always absent where there is a bail application in the High Court. The police prosecutor would represent the interests of the complainant in the Magistrates' Courts while the Director of Public Prosecutions would do so in the High Court. A complainant should be told if the accused is put on bail.

If the offence is indictable (i.e. a serious crime which has to be tried before a judge and jury in the High Court, e.g. rape or attempted rape) there will be no oral preliminary enquiry before a magistrate but a paper committal shall be held. If the accused has a lawyer, the magistrate will order the accused to stand trial in the High Court without considering whether the statements or other documents disclose enough evidence against the accused. The magistrate would only consider the contents of those statements or documents if the accused does not have a lawyer or if she/he or her/his lawyer request that this be done. If the magistrate decides there is not enough evidence against the

accused she/he will discharge the accused. If the offence is not indictable the magistrate will try it. At the end of the hearing the magistrate will find the accused guilty or not guilty. If the accused is found guilty the magistrate will sentence her/him.

### **Giving evidence**

Except for young children and persons who are mentally challenged all victims of sexual assault have to give evidence at the hearing of the case.

If the offence is indictable evidence will be given in the High Court; if it is a summary offence evidence will be given in the magistrate's court.

A police prosecutor in the Magistrates' Court and state counsel in the High Court will ask you questions. The accused's lawyer will ask more questions and perhaps followed by a few more by the police prosecutor or state counsel.

A special measures direction may provide for you to be screened from the accused or give evidence by means of audio-visual link facilities or through an interpreter or other person.

### **Protection of your privacy**

Unless a magistrate or judge allows it, your name cannot be published in the newspapers or be broadcast over the radio or television.

Hearings in both the Magistrates' Courts and the High Court can be held in private. If a private hearing is ordered only those who are directly involved in the case will be allowed in the courtroom.

The Police are required to promptly investigate a report of sexual violence and either charge the accused or send the file to the Director of Public Prosecutions for advice within three months.

**IF THE POLICE DO NOT PROSECUTE THE ATTACKER YOU CAN EMPLOY A LAWYER TO BRING PRIVATE CRIMINAL PROCEEDINGS.**

**WHETHER OR NOT CRIMINAL PROCEEDINGS ARE BROUGHT AGAINST THE ATTACKER YOU CAN BRING A CIVIL ACTION FOR DAMAGES FOR ASSAULT.**

## **DOMESTIC VIOLENCE**

### **Domestic violence includes:**

Offences such as murder or attempted murder; manslaughter; rape;

Use or threat of any other form of violence, physical or emotional injury or assaults;

Harassment such as persistent verbal abuse;

Psychological abuse such as blackmail, repeated isolation, depriving a person of adequate food or rest, deprivation of custody of children or conduct which dishonours, discredits or scorns the personal worth of a person;

Persistent following of a person from place to place;

Watching the house, place of work, business or place of education of a person;  
Making persistent unwelcome phone calls to a person;  
Using abusive language or behaving towards a person in such a way as to cause annoyance or ill-treatment to of that person;  
Drugging or intoxicating a person with drugs, or alcohol or hypnotizing them.

**Applications can be made by females, males and all members of a household, that is:**

- Persons who are or have been married to each other;
- Persons who are common law spouses or former common law spouses;
- Persons who live together or used to live together in the same household except as employees, tenants, lodgers or borders;
- Relatives;
- Persons who are or were in a relationship of a sexual nature; or
- Children and persons with a disability.

**Applications can be made on behalf of persons by parents, guardians, social workers and police officers:**

- Once the court is satisfied that she/he has sufficient understanding a child who is under 16 years old can apply for a protection order.
- A child between the ages of 16 to 18 years can apply on her/his own behalf.

Applications may be made by the aforementioned persons themselves, but while it is not absolutely necessary that a lawyer be retained, it is advisable that one consults a lawyer, since the person against whom the application is made may seek the services of a lawyer to defend himself/herself and because persons are usually unfamiliar with court procedures.

**Court proceedings**

The proceedings take place in the Magistrates' Court in the district where the conduct is alleged to have taken place and follow normal court procedure and are heard in private unless the court orders otherwise. The proceedings should not be published unless the court gives permission. In practice the courtroom may not be emptied when the proceedings are going on. An applicant should insist that her/his matter is heard in private.

If the respondent does not appear in court after proceedings have been served on her/him, the court may proceed in her/his absence or in some cases, issue an arrest warrant for the respondent to appear in court. It is usual for the applicant to call witnesses who can support the evidence of violence meted out to her/him.

Care should be taken in presenting the factual circumstances to the court. It is advisable for the applicant to obtain the assistance of a social worker or counselor for emotional support. Forms relating to various types of applications are available at the magistrates' courts or can be obtained from attorneys-at-law, the Women's Affairs Bureau or other social services organisations.

Evidence on an application for a protection order may be given on affidavit, unless the court or another party to the proceedings wishes to call the person making the affidavit to give evidence.

## **Types of orders**

The court may make several orders:

1. Protection Order.
2. Tenancy Order.
3. Occupation Order.

## **Protection orders**

Protection orders are commonly referred to as restraining orders and have the effect of forbidding a person to:

- engage in conduct complained of in the application;
- be on premises where a person lives or works;
- be on premises where a person goes for education;
- be on premises that a person often goes to;
- be in a particular place specified in the order;
- speak to or send unwelcome messages to a person named in the order; or
- cause any other person to harass or psychological abuse, or remove property used by a person named in the order.

## **The magistrate may also order a person to:**

- provide for the custody and maintenance of a child;
- contribute to the welfare of a person named in the order;
- direct a person to return specific personal property in his/her possession or control; or
- seek appropriate counseling or therapy from a person or an approved agency.

Before making such orders, the magistrate will consider things such as the need to take care of the health, safety, accommodation needs and well-being of the applicant, child or any person for whose benefit the order is made. The court will also look at the income, assets and financial responsibilities the respondent might have as well as any other relevant circumstances such as any hardship that might be caused if the order is made. Medical evidence of any injury which the applicant has sustained is useful. Either the applicant or the respondent can apply to the court for the order to be revoked.

## **Tenancy orders**

Tenancy orders have the effect of making the applicant the sole tenant of the premises where the applicant or respondent lives at the time the order is made if either person is already the tenant of those premises. The court may also order that the respondent contribute towards the rental of those premises.

## **Occupation orders**

An occupation order may be made granting the applicant the right to live in the household premises for such time and on such conditions as the court sees fit and restraining the respondent from living on the said premises. If such an order is made, the respondent will have to leave the premises.

### **Interim orders**

Interim orders are orders made for a limited time, usually fourteen (14) days. Interim orders can be made where a person applies for any of the orders in situations of urgency. They can be discharged if the respondent satisfies the court that they should be discharged.

### **Undertakings**

The court may also accept a signed undertaking from the respondent that she/he will not engage in any of the behavior complained of in the application. This can only be done if the court is satisfied that a protection order or undertaking has not already been made and that the respondent has not committed a domestic violence offence against the applicant.

### **Breach of an order**

If a respondent breaches an order or undertaking, she/he can be charged by the Police or private criminal proceedings can be instituted against her/him with an offence and brought before a magistrate to be tried for the offence.

If guilty, the penalty is a fine or imprisonment.

### **Powers of the Police**

Members of the Police Force can enter premises where they reasonably believe a protection order is being broken, or where at the request of a resident of the premises, they have reasonable grounds to suspect that a person in the home is suffering or has suffered physical injury. An arrest without warrant can be made on reasonable grounds.

### **Bail**

If a person is charged with breaching a domestic violence order, the court can grant bail to a respondent on particular conditions, e.g. that the person report at specific times to a police station, or that the person refrain from committing particular acts.

Senior police officers at police stations may also grant station bail pending further investigations.

**Remember that the law cannot cure domestic violence but gives protection to persons who may be affected by domestic violence. We must all be vigilant and do what we can to stop such acts.**

**SAY NO TO ALL FORMS OF VIOLENCE!**

## **MEDICAL TERMINATION OF PREGNANCY**

This law enhances dignity and sanctity of life by reducing the incidence of abortions, that is, abortions done by means other than under supervision by medical personnel. It also promotes safe motherhood and substantially reduces maternal deaths and complications after unsafe abortions. A woman, who in good faith, voluntarily wishes to terminate her

pregnancy, can lawfully do so according to the circumstances/provisions set out in the law otherwise she would be guilty of an offence.

The term “termination of pregnancy” means “termination of human pregnancy with an intention other than to produce a live birth.” If this Act is not complied with, it is still a criminal offence to assist a female in acquiring means, i.e. drug or instrument, to induce an abortion whether or not the female is pregnant, and such action by a pregnant woman is also unlawful.

### **When is a termination permitted and what conditions apply?**

For a pregnancy under eight (8) weeks, termination can be done using any non-surgical method. This can also only be done by or supervised by a registered medical practitioner or doctor.

For a pregnancy of eight (8) weeks to sixteen (16) weeks, termination can be done by any lawful and appropriate medical preparation used by any medical practitioner authorized under the law.

### **Conditions for terminations between 8 to 16 weeks**

The termination must occur in an institution approved by the Minister of Health. Termination can only occur if:

- (a) The mental or physical health of the pregnant woman is gravely at risk of injury. Here the doctor must consider the woman’s entire social and economic circumstances;
- (b) There is substantial risk that the child would be severely challenged mentally or physically;
- (c) The pregnant woman is of unsound mind;
- (d) The pregnancy was as a result of rape or incest, in which case the woman must provide a statement to that effect;
- (e) The woman has tested positive for HIV; or
- (f) There is clear evidence that there was failure in contraception which was being practiced in good faith by the woman.

For termination of twelve (12) to sixteen (16) weeks, two (2) medical practitioners must agree that a termination should be done to protect the life of the pregnant woman. For termination of sixteen (16) weeks and over, three (3) medical practitioners must confer and agree that the termination is necessary to protect the life of the pregnant woman.

### **Consent**

The medical practitioner must be given oral or written consent by the pregnant woman before she/he can perform a termination. No one else’s consent is required by law, whether or not the person requesting the abortion is an adult or a child. Once such consent is given, a medical practitioner cannot be sued for performing the termination except where it is established that the termination was done negligently.

### **Counselling**

Counselling plays an important part in the procedure for termination of pregnancy before and after termination. When a woman makes a request for an abortion, the law requires

that she waits for forty-eight (48) hours. During this period she is to be referred for counseling. Her partner may also be invited for counselling.

Counselling is done by medical practitioners and other personnel such as nurses and social workers and is intended to ensure that the pregnant woman fully understands the implications of an abortion, its possible physical and mental effects, and whether she has considered alternatives to abortion, such as adoption.

Counselling must also occur after the termination to ensure that the woman is aware of preventative measures such as contraception to avoid an involuntary recurrence.

### **Confidentiality**

All records of information in relation to terminations of pregnancy are confidential. If it is found that the information is used for purposes other than those allowed by law, the person owning or managing the hospital or clinic is liable on conviction to a fine and imprisonment. All records on terminations of pregnancies are forwarded to the Ministry of Health.

## LANDLORD AND TENANT

### **Am I a tenant?**

You are a tenant if you live in a property or part of a property owned by someone else of which you have exclusive possession for a set term in return for the regular payment of a sum of money called the rent.

Exclusive possession is the right to keep all others out of the set property, including your landlord. A set term can be either a single period of time ending on a fixed set date, for example 5 years (a fixed lease), or a short but definite period of time in the first place (a week, a month, a year) which will continue for further periods of the same length until ended by notice to quit (a periodic tenancy).

If you do not have exclusive possession for a set term in return for paying rent you are not a tenant but a licensee. The most important difference between a tenancy and a licence is that the law does not give licensee the same protection it gives to tenants. E.g. it is much easier for a landlord to recover possession of her/his property from a licensee than 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 whether you are a tenant or a licensee get legal advice.

### **Does my agreement with the landlord have to be in writing?**

A tenancy can be made orally (by word of mouth) or in writing. A lease is the same thing as a tenancy but the word “lease” is usually used to refer to a written agreement between a landlord and tenant for a fixed number of years.

If a lease is for more than 3 years it must be made by deed. A deed is a formal document, which must be signed before a notary public and registered in the Deeds Registry.

If your agreement with the landlord is in writing it will set out your rights and duties and those of the landlord in what are called covenants.

**Note:** Even if your agreement with the landlord can be created orally it is better for it to be in writing to avoid later argument.

### **Repairs**

Whatever your agreement with the landlord says, 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. There is one exception to this rule, which is if your lease cannot come to an end for at least 3 years and the lease says that you must make the property reasonably fit to live in.

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.

### **If the landlord fails to keep the property in repair you can:**

- send her/him a notice by registered post setting out the repairs that need doing 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, the landlord may be sued for damages.

**Note:** Although you have no duty to repair the property you must use the property in a “tenant-like” manner, that is you must take proper care of it.

### **Security of tenure**

The term security of tenure means the legal protection that the tenant receives against attempts by landlord to remove the tenant from the property. Unless you leave the property of your own free will the landlord cannot get possession of the property from you unless:

- she/he ends the tenancy by giving you a notice to quit of the proper length if your tenancy is a periodic one. A notice to quit is not needed if the tenancy was for a fixed period and has ended because the fixed period has come to an end. The landlord must give you at least 4 weeks notice to end at the end of a completed period of the tenancy. For example, if you have a monthly tenancy, the notice must come to the end of a calendar month; and
- she/he gets a court order for possession against you

### **Getting a possession order**

The court can only make a possession order on one or more of the following grounds:

1. If you have not paid the rent or have broken any other obligation to the landlord. The court can suspend the operation of the possession order on condition that you pay the rent or comply with the obligation.
2. If you or someone living with you has caused a nuisance or annoyance to neighbours or other tenants.
3. If you have been convicted of using the property for illegal or immoral purposes or have allowed the property to deteriorate (apart from fair wear and tear).



4. 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. The landlord would have to show that you not leaving would cause her/him financial loss.
5. If the landlord requires the property as a home for or for use by herself/himself or for work purposes.
6. 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. 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.
7. If the property or part of it has been compulsorily acquired or is needed for public purposes.
8. If the property is legally required to be knocked down.
9. 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.
10. If your tenancy was conditional upon your being an employee of the landlord and your employment has ended.
11. 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 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.
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:

- 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 dependant who has been living with you for at least 6 months when you die.

### **Rent**

The amount of rent you pay should be assessed (fixed) by a magistrate. If the landlord has not had the rent assessed you can apply for assessment.

**Note:** At the time of writing it is not possible to get a rent assessed as there is no magistrate carrying out rent assessments.

You must be given a receipt for every rent paid. 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?**

No. Whether or not your rent has been assessed the landlord cannot increase it except for your portion of any increases in rates and taxes payable on the property by the landlord. 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.

### **Premiums**

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

### **Can I sub-let?**

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.

## **BUYING AND SELLING LAND**

### **Advice to buyers**

Before you agree to buy any immovable property (i.e. land with or without a house and/or other buildings on it) you should:

1. Get the property valued by an independent valuator, so that you know whether the property is worth what the seller is asking for it.
2. Ask to see the document of title to the property (the transport if the land is unregistered; the certificate of title if the land is registered or the lease if that's what you're buying) so that you can make sure that:
  - (a) the property is owned by the seller (or the person who has authorized the seller to sell for her/him under a duly registered power of attorney).
  - (b) the property described is the property you want to buy (you may need to look at the plan mentioned in the description of the property);
  - (c) you will be buying full ownership of the property and not just a share in it (unless that's what you want); and
  - (d) the property is not subject to any mortgage or other charge or lease that you have not been told about.
3. Inspect the property so that you know:
  - (a) what you will be buying; and
  - (b) whether anything the seller has told you about it is true, e.g. that no one is living in it.

### **The agreement of sale**

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

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	It is usual for the buyer to pay 10% of the price as a deposit on the signing of the agreement and the balance on completion (i.e. the passing of transport, title or lease). 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.
Possession	When the buyer will get possession (usually on completion) and whether it will be vacant possession (vacant possession means that the property is free from tenants or other occupants).
Expenses	It is usual for the seller and buyer to share the expenses equally. The expenses comprise registrar's fees, duty, lawyers' fees and swearing fees. Apart from the last item and the lawyer's fees for preparing the agreement of sale, the amount to be paid is based upon the value of the property accepted by the Registrar of Deeds. (An affidavit of valuation of the property may have to be filed to ensure that duty is paid on the full market value of the property.) The higher the value, the greater the expense. A buyer and/or seller can ask to be shown how the amount she/he is asked to pay has been calculated.
Rates & Taxes	These are usually paid by the seller up to the date of completion.

Rents	If the property is rented rents are usually received by the seller up to the date of completion.
Performance	It is usual for time to be of the essence of the agreement so that if one of the parties fails to keep her/his end of the bargain within the time fixed the other can straightaway treat the agreement as at an end and take legal action.
Completion	A time limit (usually 3 or 4 months) is fixed for the completion of the purchase.

It is advisable to have a lawyer prepare the agreement of sale. One lawyer can act for both parties (but should not act for either if a dispute arises) or they can go to different lawyers.

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 necessary documents are prepared by the lawyer(s) and filed at the Deeds Registry. The registrar's fees and duty are paid at the time of filing.

If the land is under the transport system the sale must be advertised in the Official Gazette. If no one opposes the sale within 13 days after advertisement the transport or lease can be passed in the Transport Court (a special court of the High Court 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 document of title 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 collected about 3 weeks later.

Compliance certificates must be obtained by the seller or lessor and lodged at the Deeds Registry or Land Registry before the transport or lease can be passed or the transfer registered. These are (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.

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

If the buyer won't go through with the purchase the seller can forfeit the deposit and sue for damages for breach of contract if she/he will still be out of pocket (if, e.g. she/he can't sell the property for as good a price as the buyer agreed to pay).

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 title and authorizing the Registrar of Deeds to do so if necessary.

### **Mortgages**

Many people cannot afford to buy land with their own money and so get a loan for all or part of the price with 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 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 installments the mortgagee (i.e. the creditor) can sue and get judgment for the full balance due, 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.

## PRESCRIPTIVE TITLE

If a person has been in sole, uninterrupted and undisturbed possession of land for more than 12 (twelve) years he/she becomes the “de facto” owner and is therefore entitled to apply to the Commissioner of Title (commonly called “the Land Court Judge”) for a Declaration of Prescriptive Title of the land on proof of the facts to the satisfaction of the Commissioner of Title.

### **Procedure to obtain declaration of title:**

- (a) The applicant must first obtain a plan which is to be done by a sworn land surveyor, of the land for which she/he is seeking a Declaration of Prescriptive Title.
- (b) Thereafter the applicant will apply by way of petition supported by an affidavit(s) to the Commissioner of Title. This petition is filed in the Registry of the High Court.
- (c) Notice of the intended application is also required to be advertised in 3 (three) consecutive publications of the Official Gazette as well as publication in a newspaper of general circulation in Guyana for 3 (three) consecutive Saturdays. These publications must all be on the same dates, and copies of these publications have to be produced in evidence in the court.
- (d) Written notice of the intended application has to be served on or mailed to the neighbouring proprietors by registered mail within 7(seven) days after the first publication of the notice.
- (e) Any person intending to oppose the application is required to file a Notice of Opposition supported by affidavit within 1(one) month after the first publication of the notice. When all these procedures have been completed, the matter is set down for hearing.
- (f) The Land Court usually obtains a Registrar’s Report as to the registered owner(s) of the land if any.
- (g) The matter is thereafter fixed for hearing by the Commissioner of Title. After the hearing, the court may grant the applicant title by virtue of the fact of his/her occupation of the land in question for 12 (twelve) years or more without the objection, consent or permission of the owner.

(h) After an Order for Prescriptive Title is obtained, the applicant may apply to the registrar for a transport/title based on the order.

If the application is opposed, the matter is treated as a defended matter and is set down for trial. At the trial, the Commissioner of Title hears evidence from the applicant as well as the opposer and any witnesses they may wish to call before making a decision.

If you are a tenant, or in possession of property with the knowledge or consent of the owner, or if you are unable to prove that you have occupied the property or premises to the exclusion of the owner of anyone with a better right to it, a Declaration of Title will not be made.

An Appeal can be made from a decision of the Land Court to the Court of Appeal.

## HIRE PURCHASE

### **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.

### **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.

A simple example is where, in return for C lending D \$1,000.00, G agrees that if D does not repay C, she/he (G) will. C is the creditor, D the debtor and G the guarantor. Another word for guarantor is surety.

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. E.g. 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 the 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 (i.e. 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. E.g. 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. E.g. 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 THINK OVER VERY CAREFULLY 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.

## **LICENCES**

There are several activities which, in order for them to be lawful, require licencing. The following are some areas for which licences must be obtained.

### **Motor vehicles & drivers**

The law stipulates that all motor vehicles must be registered and licenced. Charges are levied 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. This period is usually extended to February or March pending the presentation of the National Budget. It is an offence to drive an unlicensed vehicle.

An application for a road licence must be made to the licencing officer at the Licence Revenue Office. When applying for a licence, a certificate of registration, a certificate of fitness and at least third party insurance for the vehicles must be produced.

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. It also cannot be used in respect of another vehicle. The licence usually states the registration number of the vehicle.

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**

Should the licence not be transferred to the new owner, the new owner must ensure that the vehicle is licenced.

### **Drivers**

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**

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.

### **Breaches**

Should there be breaches of the above provisions, the courts have the power, on conviction for an offence, to institute a fine, suspend the licence or disqualify the offender from being licenced to drive a motor vehicle.

### **Music and dance**

The law stipulates that in order to lawfully operate a place which provides for public dancing, singing, music or other similar public entertainment, a licence must first be obtained from the District Magistrate.

The magistrate has the discretion to grant licence to any person(s) she/he thinks fit to keep or use place(s) for all or any of the purposes stated above. The magistrate also has the power to put restrictions on each licence. The duration of this licence is 1 year but may be for less, and is transferrable.

### **Procedure for transfer of music and dancing licence**

- (a) Before the application is made for a new transfer 14 days notice must be given to the magistrate's clerk and to the police officer-in-charge of the district.
- (b) During the 14 days, the applicant should publish on 4 occasions in the daily newspaper, notice of an intention to apply for a licence to be transferred.
- (c) This notice of intention should be affixed on the outside and inside of the front door of the intended premises until the grant or refusal of the application
- (d) The application for a licence must be accompanied by a certificate of safety from the Chief Works, Hydraulics and Supply Officer of the City Engineer's Department or the Fire Service.

The magistrate can revoke or suspend the licence for any breaches of safety or fitness, based upon the report of the inspections done by the Fire Service and/or Chief Works, Hydraulics and Supply Officer.

**Note:** A notice must at all times be affixed in a prominent place stating:

“LICENCED IN PURSUANCE OF THE MUSIC AND DANCE LICENCES ACT FOR...”

### **Cinematography**

In order to operate a cinema, a licence must be granted by the Cinematography Board. This application must be supported by:

- (1) A certificate of safety from the Chief Fire Officer with respect to the premises indentified for the cinema;
- (2) A certificate from the Chief Works, Hydraulics and Supply Officer on the fitness of the premises; and
- (3) A certificate approving sanitation facilities from Central Board of Health or Medical Office of Health of the district.

A provisional licence may be granted until the above certificates are obtained.

### **Liquor licence**

A liquor licence must first be obtained before a person can sell liquor to members of the public.

There are two (2) main licence:

- (1) On-Licence: for sale of liquor for use on the premises at which it is sold; and
- (2) Off-Licence: for sale but for use on premises other than that from which it is bought.

The Off-Licence is classified further:

1<sup>st</sup> Class Licence - the holder is authorized to store in bulk, mix and blend liquor on premises and to sell liquor, wine or malt liquor, and to import and sell spirits in bond within 1 mile of Georgetown or New Amsterdam.

2<sup>nd</sup> Class-Licence - only to keep and sell on licenced premises spirituous liquor, wine, or malt liquor.

3<sup>rd</sup> Class-Licence - only to keep and sell on premises malt liquor and wine.

Hotels, spirits shops, restaurants, parlours and clubs must also be licenced to sell liquor for consumption on the premises. The licencing districts are Demerara, Berbice and Essequibo.

The Liquor Licence Board in each district comprises 3 magistrates which sit in Georgetown, New Amsterdam and Suddie.

The forms of application and the procedure for application are set out in the law. It is an offence to sell liquor on premises without a licence. The Commissioner-General of the Guyana Revenue Authority may enter any store or business premises and search for wine and malt liquor, and if such premises are found to be unlicensed to sell the wine or malt liquor, can seize the items and charges can be laid.

### **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. 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. All licencing and registration is done pursuant to the law.

## **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**

1. All powers of attorney must be in writing and executed by the giver of the power before a notary public and at least one but normally two witnesses. It is not necessary for the attorney to sign the power.  
Note however that if a power of attorney is made in the United States of America or any other non-Commonwealth country the execution requirements are different. There are several ways in which the power can be executed in order to be valid in Guyana but the simplest way is for the execution to take place before an officer of a Guyana consulate or embassy.
2. Except for special powers of attorney under the Deeds Registry Act authorising the passing of a transport mortgage or lease, or empowering someone to apply for a grant of letters of administration of a deceased person's estate, all powers of attorney must be registered in the Deeds Registry.

### **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 2011, 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

Witnesses

AND IN MY PRESENCE  
QUOS ATTESTER  
NOTARY PUBLIC

RIGHTS AT WORK

**Can I join a union?**

Yes. The Constitution of Guyana protects your rights to join a trade union of your choice. If anyone tries to stop you exercising this right you can take her/him to court.

**Union recognition**

Your trade union should be recognized by the employer so that it can negotiate pay and other conditions of work. If the employer refuses to recognize your union the union can

ask the Minister of Labour to intervene. If this does not work your union may decide to take industrial action, such as calling a strike.

### **Your contract of employment**

Every worker has a contract of employment that is a legal agreement with the employer, which sets out your rights and duties and the employer's rights and duties towards you.

Unfortunately, your contract is probably not all written down in one place. Its terms will include things agreed to between you and your employer and, where there is a union, things agreed to between the union and your employer as well.

You will be able to find information about your contract of employment in:

- your letter of appointment; This usually sets out your job title; rate of pay; leave entitlement and allowances (if any). You signing and returning a copy of the letter of appointment automatically creates a contract.
- your job description;
- a written contract of employment, if the employer provides one;
- the terms of a collective agreement (i.e. an agreement between your union and the employer) on matters such as pay, hours of work, which have been made part of your own contract;
- regulations made by Parliament fixing your minimum pay rate, hours of work, holidays with pay; and
- the (usually unwritten) "custom and practice" of your workplace.
- at the workplace, there may be a set of rules or regulations which govern matters of discipline and general terms and conditions of employment.
- there is now The Termination of Employment and Severance Pay Act, 1997, which establishes guidelines for discipline and the calculation of severance pay on termination of employment. (See section on Termination of Employment and Severance Pay.)

### **Your duties**

Whatever the written documents says, there are certain legal duties you have towards your employer. These are:

- to obey all lawful and reasonable orders;
- not to misconduct yourself;
- to give faithful and honest service, and
- to use reasonable skill and care on the job.

These points are important if, for instance, you are dismissed for misconduct, or if you sue your employer for injuries received at work and the employer says you were responsible for your own injuries by your own negligence (i.e. not using "reasonable skill and care").

### **The employer's duties**

Again, whatever the written documents say, the law says that an employer has certain duties towards her/his workers. These are:

- to take reasonable care for the employee's safety; This is further set out in the Occupational Safety and Health Act, 1997 (OSHA).
- to pay to the agreed wages or salary;
- not to require the employee to do unlawful acts; and

- to provide work for workers paid by results or commission if work is available.

**Remember:**

(1) Very often, what matters in practice is the collective agreement between the union and the employer and the various laws of Parliament and regulations made under them which cover matters such as health and safety, pay, sex discrimination and so on.

(2) If your contract isn't necessarily what the employer says it is: you and your union can argue about what the contract says, and in the last resort the court can be asked to decide.

**Hours of work**

The hours you have to work are usually agreed between the employer and the union. Where there is no collective agreement on hours, the employer decides how long you have to work, the length of the shift, the periods of rest and so on.

In some cases however, the law has laid down the maximum hours per day to be worked, the length and frequency of breaks, the hours of the day when work can be done and so on. You can ask your union or the Ministry of Labour whether you are covered by these regulations.

**Holidays**

Your rights to be paid annual or other vacation leave are usually agreed between the employer and the union or fixed by the employer where there is no collective agreement on holidays.

There is, however, legislation which provides for the grant and regulation of annual holidays with pay for all categories of workers.

Many employees, including domestic workers, manual workers, clerical workers and watchmen, have their holiday entitlements fixed by law. What the law prescribes are minimum annual entitlements so there is nothing to prevent you or your union agreeing to more.

Basically, the law states that every worker/employee should receive:

- (a) For every month completed - 1 day
- (b) For half-day workers - each half day counted as a day
- (c) Daily/hourly workers - 1 day per every 20 days/160 hours worked.

You can ask your union or the Ministry of Labour whether you are covered by these regulations.

Any term in a contract of employment providing for fewer holidays with pay than provided for under the regulations is of no effect.

**Wages and salaries**

Your wage or salary is usually agreed to between the employer and the union, or fixed by the employer where there is no collective agreement on pay.

The minimum wages of certain employees are fixed by law. You can ask your union or the Ministry of Labour whether you are covered by minimum wages regulations.

Your employer must pay you in money unless you ask for a cheque.

If is illegal for your employer to:



- (1) make it a condition of your employment that you spend your wages or any part of them in a particular shop or other place, in any particular way, or with any particular person; or
- (2) dismiss you for failing to spend your wages as directed by her/him.

### **Deductions**

Before paying you, your employer must deduct from your wage or salary your National Insurance (NIS) contribution (the amount of which depends on the amount you are paid) and income tax, if you earn enough to have to pay it.

Your employer cannot make any other deductions from your wage or salary except for accommodation, grazing fees, tools, food, medicines or other goods supplied at your request or advances made at your request. In any event, the total deducted in any month cannot be more than one third of your wage or salary for that month.

### **Equal pay**

Under the Equal Rights Act women and men must receive equal pay for the same or similar work.

### **Sick Pay**

The general rule is that if you don't work you don't get paid, but your contract of employment may give you the right to sick leave with pay.

If you are paid your full wage or salary while you are off sick you cannot get NIS benefits. What usually happens is that your pay is suspended so you can get sickness benefit and then your employer makes up the difference between the amount of benefit received and your full wage or salary. NIS does not pay hospital bills but your contract of employment may cover this and you may also be covered by a health insurance scheme to which you and your employer contribute.

### **Maternity Rights**

If you have paid enough NIS contributions and have been working long enough you are entitled to maternity benefit from the National Insurance Fund.

The amount you will be paid is 70% of your average earnings during the last 26 weeks of pregnancy. Maternity benefit is paid for 13 weeks or longer in special circumstances.

You are also entitled to a maternity grant if you or your husband has paid enough contributions.

The Prevention of Discrimination Act, 1997, now protects you from being dismissed due to pregnancy or denial of special leave for maternity purposes. At workplaces where there is a Collective Bargaining Agreement or Employment Code, these matters are usually agreed upon.

### **Dismissal**

What is a dismissal?

A dismissal can take the following forms:

1. You are sacked or fired by your employer with or without notice for good and sufficient cause.

2. You hand in your notice because your employer has broken your contract of employment (for instance by transferring you to a lower grade). This is called “constructive dismissal.” You have to prove that your employer broke the contract and that you are entitled to quit. This can be very hard to prove.

**Termination of services may occur as follows:-**

1. Employer or employee gives notice to the other.
2. You are made redundant due to modernization, automation, closure, re-organization or sale of your employer’s business.

**Dismissal with notice**

Your employer can dismiss you for any reason by giving you notice in the agreed length of time, or if none has been agreed, reasonable notice.

What is reasonable depends upon the kind of work you are employed to do, whether you are a senior or a junior employee and so on.

In the absence of an agreement, manual workers are entitled to two weeks’ notice.

If your employer does not want you to work out your notice she/he must give you pay instead of notice.

**Dismissal without notice**

Your employer can sack or fire you without notice or pay instead of notice for:

- incompetence;
- breach of faith;
- misconduct;
- disobedience; or
- negligence;

**Wrongful dismissal**

If your employer sacks you without notice or without sufficient reason for doing so you can sue her/him for damages for wrongful dismissal. The amount of damages you will get will be the amount you would have been paid for the period of notice you should have been given.

**Note:** You cannot be dismissed or disciplined on the basis of, among other things, sex, race, colour, religion, social origin, marital status and political opinion.

**Pensions**

If you have paid enough NIS contributions you will be entitled to an old age pension when you reach 65 years. The amount of your pension will depend on how much you used to earn and how many NIS contributions you made, but you cannot get more than 60% of what you used to earn.

You may also be covered by an employer’s pension scheme. This should provide for:

- payment of your own pension;
- a pension for your widower or widow;
- other benefits, for example for children and dependant relatives
- some pension schemes require that a specific beneficiary or beneficiaries be named.

Your pension is a part of your pay packet. You or your union can negotiate your pension benefits in the same way you negotiate for your pay.

## 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:

- (i) 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.

## TERMINATION OF EMPLOYMENT AND SEVERANCE PAY

### **Continuity of Employment**

Employment is considered as continuous from the first day of work to and including the date of termination of employment of the employee.

1. There is no break in service for sick, maternity and annual leave; suspension (with or without pay); reinstatement, temporary layoff of 6 weeks or less; lockout; or in accordance with a contract of employment. These must be in accordance with the law or by agreement between employer and employee.

However in instances of industrial action, in accordance with law or a collective bargaining agreement, while this action does not interrupt employment, the period off the job will not be added to length of service. Therefore, while one may not lose one's job, the industrial action may affect how one's years of service are counted. The days off the job will not be added. In cases where a business is sold, leased, transferred, there can be continuous employment if the employer taking over the business agrees to this.

Your employer has a duty under the law to keep records on all areas of the law which require record-keeping.

### **What constitutes termination of employment?**

**The Termination of Employment and Severance Pay Acts 1997 and 1999 provide for the termination of employment and payment of severance pay.**

1. When the employer and employee agree that the relation should end.
2. The employee is made redundant due to modernization or automation of the employer's business; closure or discontinuance of all or part of the business to improve efficiency, or the impracticability of continuing the business at its present level due to factors including shortage of materials or breakdown and reduced operations due to economic conditions.
3. By the employer firing an employee for good and sufficient cause, or by an employee resigning from employment for good or sufficient cause.
4. By the employer or employee giving notice to the other.
5. Before terminating employment for a number of employees for any of these reasons the employer consults with the employees, any trade unions and the Chief Labour Officer and informs them of those reasons, the numbers and categories of workers likely to be affected and the period over which any terminations are likely to be carried out.



**N.B.** It is a breach of the law for an employer to dismiss an employee from a job or discipline a person on/for:

- (a) discriminatory grounds such as race, colour, religion, social origin, marital status, family responsibility, political opinion, ethnic origin or sex or national extraction;
- (b) grounds such as age, (except for a law or collective agreement specifying grounds of retirement age);
- (c) pregnancy or reason connected with the pregnancy;
- (d) certified absence from work due to sickness or injury;
- (e) absence from work on lawful military or civic duty;
- (f) participation in allowed industrial action or refusal by an employee to do the work of another who is on industrial action;
- (g) filing a complaint or being involved in proceedings in relation to alleged violations by the employee of any law or rule.

An employer also cannot discipline or dismiss an employee for filing a complaint or taking part in proceedings concerning violations committed by the employer.

### **Probation**

Serving a probationary period of at least 3 months or any other reasonable time may also be required by an employer of an employee.

### **Termination of employment by employer**

This can occur as a result of:

1. Serious misconduct.
2. Misconduct on account of which the employer cannot be expected to continue to employ an employee e.g. theft.
3. Warnings in writing for similar misconduct.
4. Redundancy (see above). In such cases, adequate notice of at least 1 month must be given and, where applicable, the trade union concerned must be informed and involved. All steps must be taken by the employer to minimise the hardship to the employee in such circumstances.
5. During probation for unsatisfactory performance. However, before this can occur the employee must have been informed about her/his unsatisfactory performance and given time to improve.

### **Certificate of termination**

An employee is entitled to a certificate of termination where she/he requests one from an employer.

### **Notice**

An employer must give an employee with less than one year's service, 2 week's notice. One month's notice must be given for service of 1 year or more. The employer can however, opt to pay the employee remuneration (wages or salary) instead of notice. Notice cannot be given while an employee is on authorized leave.

A longer period of notice can be agreed to between employer and employee. You may seek redress in the High Court if you feel that your dismissal was unfair. If you get judgment, compensation may be awarded to you.

## **Discipline**

An employer is entitled to discipline an employee where it is reasonable to do so. Discipline may be by way of:

- (a) Written warning;
- (b) Suspension without pay.

Fines or other monetary penalties cannot be imposed. If it is felt that the disciplinary action taken was unreasonable, a complaint can be made to the Chief Labour Officer for a decision by her/him. Should the action be ruled unreasonable, all necessary steps must be taken for the employer to reinstate the employee i.e. withdraw warning letter or refund pay deducted.

## **Severance/redundancy pay**

This is payable in the event that an employee is made redundant. The law sets minimum allowances for redundancy or severance allowance:

- (a) For 1 year to 5 years – 1 week's wages for each completed year.
- (b) For 5+ years to 10 years – 2 week's wages for each completed year.
- (c) For 10 + years – 3 week's wages for each completed year up to 52 weeks.

By collective bargaining agreements better allowances in this regard can be agreed upon. It is an offence for an employer not to pay severance or redundancy allowance where it is required to be paid. On conviction, the penalty is a fine and imprisonment. The magistrates' court may also order the employer to pay redundancy/severance allowance. It is generally an offence to disobey the provisions of the law. The Chief Labour Officer prosecutes under the law.

# **OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)**

Employers have a duty to take reasonable care of their workers by providing;

- a safe place of work;
- a safe system of work;
- adequate plant and equipment with guards or rails as required;
- competent staff; and
- training to ensure that workers understand and know safety procedures, and know of all hazards in the workplace.

The OSHA provides for registration and regulation of all industrial establishments, and occupational safety and health of persons in the workplaces. Hence, factories, shops, logging operators, banks, corporations, homes where domestics and other types of workers work, are all covered by the OSHA. The law sets out clearly all obligations by an employer in providing a safe place and system of work OSHA.

If you have an accident at work, however small, report it to whoever keeps the accident book or to the personnel officer. You may also file a complaint with the Ministry of Labour. You cannot be dismissed for doing so. This protects you later if you find you were injured more seriously than you thought.

Your employer also has a duty to report it to the Ministry of Labour which enforces the law and to provide information when treatment is required in the event of an accident.

If you are injured at work or become ill as a result of inadequate safety precautions, you can sue your employer for damages. You will need legal help with this.

In order to get some compensation or damages for injury, ill-health or the death of a close relative at work, you or the person acting for you will have to prove to the court:

- that the employer breached her/his duty to the worker by failing to take reasonable care; and

- that the injury occurred as a result of this breach of duty and of provisions of the law.

It can take several years for this kind of action to be finalized. Most cases are settled without a court hearing actually taking place. Your lawyer will advise you how much the other side has offered and whether you should accept the offer.

If you were partly responsible for the accident, you can still win a claim against the employer, but the damages will be reduced depending on how much the judge thinks you were to blame. This is called contributory negligence.

### **NIS benefits**

If you are off work because of an accident at work, or because of an industrial disease, you can claim social security benefit, through the NIS once you have made the required number of your contributions. There are three different benefits:

(1) sickness benefit is paid if you cannot work for a reason other than employment injury, for periods of illness lasting four days or more up to a maximum of 26 weeks;

(2) industrial injury benefit is paid if you cannot work because of an injury received in an accident at work, for the same period as sickness benefit;

(3) industrial disablement benefit is paid after industrial injury benefit stops. It goes on as long as you are disabled because of accident or disease. You can get industrial disablement benefit even if you are working. The amount you get depends upon the extent of your disablement, which is decided by a medical board.

In assessing damages for an accident at work no account is taken of benefits received.

## **POLICE POWERS OF SEARCH**

### **Search before arrest**

As a general rule, the police have no right to stop and search you if you have not been arrested unless they have reasonable grounds for suspecting that you are carrying prohibited drugs, stolen goods or firearms.

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

But if you refuse to allow the police to search you, you may be arrested and you are likely to be searched at the police station. 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:**

Ask if you are being arrested.

Ask what the police are looking for and under what authority they intend to search you. If they do not give reasonable grounds for wanting to search you, you need not agree to being searched.

You can use reasonable force to protect yourself against an illegal search. But it is usually better to make a complaint and/or bring an action later.

When possible, make sure that anyone who is with you stays to watch you being searched. They may be needed as witnesses later.

If you agree to be searched but want it done privately, ask to be searched at the police station.

Try and take the witnesses with you. Remember that you are going voluntarily and can leave as soon as you have been searched unless you are then arrested.

If the police officer is in plain clothes ask to see her/his identification card. 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 get 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 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 use as much force as is reasonably necessary to make them leave. Alternatively, you may decide not to use force but to take legal proceedings against the police.

### **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.

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 authorises entry at any time.

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

Ask to see the warrant and read it carefully (the police only have to show it to you once). 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 are 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 in the way the search is carried out.

If you are alone, try to contact a lawyer or someone else to come and witness the search. If the police refuse to let you make a phone call, do your best to see what the police take. 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 (and remember, you can only be searched by an officer of the same sex as you) you can refuse to be searched.

If the police come late at night ask them to return in the day. 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.

Ask for a receipt for anything the police take away with them.

## **POLICE POWERS OF ARREST**

Arrest is the formal procedure by which a person is taken into custody to answer a charge.

In some cases a person can only be arrested by a police officer with a warrant; in others she/he can be arrested without a warrant and not only by a police officer but by a private citizen.

### **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. 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.

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.

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.

### **Arrest without a warrant**

You can be arrested without a warrant by a police officer if:

- the officer has seen you commit an offence;
- someone charges you with having committed an offence and gives an undertaking to prosecute the charge;
- the officer finds you disturbing the peace;
- she/he reasonably suspects you have committed or are about to commit an offence or breach of the peace; or
- she/he finds you loitering about between 8 p.m. and 5 a.m. and you cannot give a good account of yourself.

Except for serious offences, a police officer should not arrest you if you give her/him your name and permanent address.

If you are arrested without a warrant you must be told in simple language the reason for your arrest. If you are not told why you are being arrested you should ask. The police officer is duty bound to tell you unless you are caught re-handed so that an explanation is not needed or 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.

### **Citizen's arrest**

You can arrest anyone who you see committing an offence. But 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 wrongly 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 her/himself by giving her/his name, number and the station at which she/he is based.
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.

**After you have been arrested**

1. If you have been arrested it is advisable to see a lawyer. You have the right to legal advice in private. If you do not know a lawyer, ask your relatives or friends to find one.
2. Generally speaking, 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. You can refuse to let the police take your fingerprints. If you do refuse, the police may then apply to a magistrate to make an order that your fingerprints be taken without your consent. If your fingerprints are taken with a court order and you are later acquitted, the fingerprints and all copies and records must be destroyed. The same basically applies to taking your photograph.
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. But:

- failing to answer certain questions related to motoring offences is an offence;
- failing to give an explanation where you have in effect been caught 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 in a position 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 or not 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, provided that you have not been charged with an offence or informed that you may be prosecuted for it.
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.”
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. As a general rule, 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.
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.
  - (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 whether or not you sign the record. There is no such thing as an off-the-record statement.
  - (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.



- (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 down your statement she/he should write down your words and not translate them into “police talk.”
  - (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.
  6. Reasonable arrangements should be made for your comfort and refreshment. Whenever possible you and the officer questioning you should be seated.
  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.

### **Voluntariness**

Any statements made by you should not be used in evidence unless the court is convinced that they were made voluntarily. 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 organisation 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. Even if the offence is concerned with your place of work, remember that you do not have to say anything.

## **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.

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 drop 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.

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 recognisance or bond. This means that no money or property has to be lodged but the accused must sign a recognisance or bond by which she/he promises to come back to court for trial.

Bail can be granted with conditions e.g. that 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 recognisance or bond stating that she/he will ensure that the accused attends court on the date set for trial.

The surety lodges 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 make it. This amounts to a refusal of bail.

### **Paying bail**

The bail is lodged by the bailor at the magistrates' office or the Supreme Court Registry, as the case may be, 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 is finished and there is someone else willing to become a bailor in her/his place she/he can appear at court on any day and ask to

withdraw. If a bailor wishes to exchange bail lodged for alternative security she/he can also do this.

Bail is security only for as long as a trial lasts. So, if there is a preliminary enquiry in the magistrates' court and then a trial in the High Court, bail has to be renewed when the case goes to the High Court.

When bail is renewed the bailor will have to sign the recognisance again. When committing the accused to trial in the High Court the magistrate will state whether the same or a different amount 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 released from your obligation.

## **DRUGS AND THE LAW**

**THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) ACT PROVIDES HEAVY PENALTIES FOR 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.**

### **Police powers**

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.

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.

The search can be carried out by the police officer named in the warrant with such help as she/he thinks reasonable at anytime or times within a month from the date of the warrant.

### **Reasonable force can be used**

The police can seize any narcotics 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.

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.

### **Offences - (Maximum penalties on conviction in the High Court are given).**

1. If you use opium, cannabis, heroin or cocaine or are found in possession of any utensil connected with the use of these narcotics or are found without reasonable excuse in any place where persons are known to use the narcotics or allow property which you own, occupy or manage to be used in connection with the use or trafficking in narcotics you can be fined and imprisoned.
2. (a) If you are found in possession of narcotics you can be fined and imprisoned.  
(b) If you are found in possession of narcotics in or near a school or anywhere else where under 18 year olds are likely to be you can be fined and imprisoned for life.
3. If you traffic in narcotics (i.e. import, export, make, sell, supply, administer or deliver narcotics without a license) you can be fined and imprisoned for life. If you are found in possession of more than the small amounts of narcotics specified in the Act it will be up to you to prove that your possession was not for the purpose of trafficking.
4. If you are found responsible for the death of a person under 18 years old as a result of her/his use of a narcotic you may be sentenced to death. If you are found to be one of several persons who has been responsible for a person under 18 years old using narcotics within 3 months of her/his death you may be sentenced to death.
5. If you take a narcotic into or out of prison you can be fined and imprisoned.
6. If you grow a prohibited plant on your land or allow anyone to grow a prohibited plant on your land or any land that you have a right to occupy you can be fined and imprisoned.  
Your land or your right to occupy it and all machinery, equipment and other things used in connection with the growing of the plant will be forfeited to the State. If you find out that a prohibited plant is being or is about to be grown on property over which you have any rights and do not promptly inform the police it will be up to you to prove that you did not agree to what was going on.
7. If you handle anything containing a narcotic you can be fined and imprisoned, unless the handling was in connection with trafficking, in which case you can be fined and imprisoned for life.
8. If you send any narcotic by post you can be fined and imprisoned.
9. If you bring into or send to Guyana any narcotic you can be fined and imprisoned.
10. If you obstruct any police officer in the execution of her/his duties or in any other way attempt to defeat the course of justice under the Act you can be fined and imprisoned.

11. If you fail to give any information or document required for the purposes of the Act or give false information you can be fined and imprisoned.

**Note:** Upon a subsequent conviction in the High Court of any of the offences listed at 1, 5, 7, 9 and 10 above, you can be imprisoned for life.

Any property you have allowed to be used in connection with an offence under the Act can be forfeited.

Upon conviction of any of the offences listed at 2 (b), 3, 4, 5, and 7 above ALL your property can be forfeited to the State. However, the rights of persons who have genuine claims over your property are protected. Once you are suspected of having committed one of these offences an order can be obtained preventing you from selling or dealing with your property and/or putting the Official Receiver in charge of it. If your conviction is set aside on appeal you can apply for any property forfeited to be returned to you.

Unless you are arrested for offences 1 or 2 above bail will not be granted except in special circumstances. But you should be tried within a reasonable time and if you aren't this may amount to a special reason for granting you bail.

If you are convicted of an offence under the Act and the penalty is a sentence of death or a sentence of imprisonment for life, or imprisonment for a minimum term the court can only substitute another punishment or sentence you to less than life imprisonment or less than the minimum term set out in the Act if there are special reasons.

If you are under 18 at the time of the offence this could be a special reason. Other punishments include release upon recognizance, probation or being sent to a training school.

If you are convicted of being in possession of less than five grams of cannabis and you are able to prove to the court that you had the cannabis for your personal use this could be a special reason.

The Act contains provision for rehabilitation of drug addicts.

## GOING TO COURT

### **Which Court?**

There are several courts.

THE CARIBBEAN COURT OF JUSTICE

THE COURT OF APPEAL

THE FULL COURT

THE HIGH COURT

MAGISTRATES' COURTS

LAND COURT

### **Magistrates' Courts**

The Magistrates' Courts are the largest in number. Small criminal and civil matters are heard in them, e.g. cases of minor assault, petty theft, abusive language, landlord and tenant claims and claims for debts under \$100,000.00. There are magistrates' courts in every county and most cases brought by the police and individuals are heard in them. A person may also bring a private criminal action in the Magistrates' Court.

**Note:** The Director of Public Prosecutions (DPP) has at all times the discretion to withdraw a private matter. 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, after hearing and assessing the evidence led before her/him, or the statements produced in paper committal proceedings may then commit the accused to stand trial in the High Court. If insufficient evidence was found to have been led, then the accused would be discharged.

**Note:** A discharge is not an acquittal. Charges may again be brought against a person for the same alleged offence.

### **High Court**

Above the Magistrates' Courts is the High Court, where serious criminal cases such as murder and rape are heard, as well as civil claims for amounts over \$100,000.00. These cases include trespass to land and claims for damages for injuries as a result of traffic accidents. The High Court also deals with custody and adoption of children, divorce, injunctions, applications for probate and letters of administration and the passing of transports to land and mortgages.

There is one High Court but cases are heard in each country, at the High Court buildings in Georgetown, New Amsterdam and Suddie.

### **Full Court**

Appeals from the Magistrates' Courts and from a High Court judge's decision in chambers are heard by the Full Court of the High Court.

### **Court of Appeal**

The Court of Appeal is where both criminal and civil appeals from the High Court and some from the Full Court and Magistrates' Courts are heard. The Court of Appeal is in Kingston, Georgetown.

### **Caribbean Court of Justice**

The final court of appeal is the Caribbean Court of Justice which is located in Trinidad & Tobago.

### **Land Court**

The Land Court is a court established by statute to adjudicate on matters involving lands, including prescriptive rights.

**Who presides over the courts?**

A magistrate, who is normally an attorney-at-law, presides over each magistrate's court. Some deal exclusively with certain kinds of case, e.g. claims for possession by landlords and fraud.

A magistrate is addressed as "Your Worship."

A judge presides over sittings of the High Court. There is provision for twelve judges of the High Court and overall responsibility lies with the Chief Justice.

Sittings of the Full Court are presided over by not less than two judges.

The Chancellor, who is the head of all the judges, and four or five other Justices of Appeal comprise the Court of Appeal. Three or five members of the court hear appeals.

The Land Court is presided over by a Commissioner of Title (sometimes called the Land Court Judge).

Judges of the High Court, the Full Court, the Court of Appeal and the Land Court are addressed as "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 \$100,000.00 or for property worth less than \$100,000.00, you should file a claim called a plaint in the Magistrates' Courts. A copy of it with a date fixed for hearing before a magistrate will then be served by a bailiff on the person you have sued.

If you wish to bring a private criminal case, perhaps for insulting or abusive language, you must file a complaint in the Magistrates' Courts and a copy of it will be served upon the person you wish to summon.

If you want to claim a sum of money over \$100,000.00 or damages for wrongful dismissal, slander, trespass or injuries received in a car accident or for a breach of your constitutional rights you must file your action in the Registry of the Supreme Court. It is then served by a marshal on the person you are claiming against.

All criminal proceedings in the High Court are brought by the Director of Public Prosecutions.

**Do I have to have an attorney-at-law?**

No, but it is advisable to have an attorney-at-law represent you, particularly in the High Court, where Rules of Evidence and procedure have to be followed strictly.

**How should I dress for court?**

Sober dress and colours (avoid bright colours) should be worn. Unbuttoned shirts or very low cut or short dresses may not be allowed in court. Men are not allowed to wear hats.

For women, tailored long pants (not tight) are permitted, or pants suits. Men should refrain from wearing faded jeans.

## LEGAL AID

### **What is legal aid?**

Legal aid consists of the giving of legal advice, assistance and representation to persons who might otherwise be unable to obtain same on account of their means.

### **Who provides legal aid?**

The Guyana Legal Aid Clinic was established to assist those persons in need of legal aid. A nonprofit organization, it is run by a Board of Directors and is situated at the Maraj Building on Charlotte and King Streets, Lacytown, Georgetown, Guyana.

The clinic now has three other offices; the Essequibo office located in the RDC Compound at Anna Regina, Essequibo Coast, the West Coast Berbice office located in the RDC Compound at Fort Wellington, West Coast Berbice and the East Berbice/Corentyne office located in the RDC Compound at Vryman's Erven, New Amsterdam, Berbice.

### **Who may apply for legal aid?**

- Pensioners
- The elderly
- The unemployed
- Persons in the lower income bracket

### **What I need to have when going to the clinic?**

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

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:**

Subject to sufficient resources, the clinics assist clients facing criminal charges and with most civil matters in the Court of Appeal, the High Court and most Magistrates' Courts. It does not however handle conveyancing matters, large estates, prescriptive title applications (unless a waiver is approved by the directors), defamation actions or possession proceedings by a landlord.

Legal services are provided to all clients 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 office is located in the upper flat of the Guyana Legal Aid Clinic and the services are free.

## **MEDIATION**

### **What is mediation?**



Mediation is a court-connected process for settling disputes between parties by an independent trained mediator. It is an important supplement to the court process.

### **Who is a mediator?**

A mediator is a trained person who acts as an independent, neutral third party and is selected by the parties to a dispute to facilitate and assist them in attempting to reach a voluntary settlement of the dispute(s). The mediator does not provide legal advice or representation and does not make any decisions.

### **Benefits of mediation**

- (a) Mediation can prevent lengthy litigation;
- (b) Mediation is cheaper. It avoids the continuity of litigation by way of appeals to higher courts and there are no court costs awarded;
- (c) Mediation saves time. It brings quicker closure to a dispute;
- (d) Mediation is fair and neutral and provides an opportunity for parties to tell their stories;
- (e) Mediation is conducted in an informal setting and is confidential;
- (f) Mediation allows the parties to develop creative solutions to all issues important to them and not just the underlying legal disputes;
- (g) Mediation preserves personal, professional and business relationships;
- (h) The parties can select their Mediator;
- (i) Mediation agreements usually have high compliance rate since people are more satisfied with solutions that have been mutually and voluntarily agreed to by them; and
- (j) In a successful mediation, everyone wins.

### **The mediation process**

When a matter is referred to mediation by the court, a mediator is selected from a roster of mediators attached to the Mediation Centre located in the High Court compound. A date is fixed for the mediation. Parties attend with their lawyers. The mediation process is explained to the parties by the mediator and the parties tell their stories

If an agreement is reached, a Mediation Agreement is drafted by the mediator. The case will go back to the judge before whom the matter came up and the agreement will be entered as a consent order having the same effect as an order of court. 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 IS A WIN-WIN SOLUTION.