

99046025002000

Requesting a child support determination, contentious proceedings

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Modul	Sachverhalt
Leistungsschlüssel	99046025002000
Leistungsbezeichnung I	Requesting a child support determination, contentious proceedings
Leistungsbezeichnung II	Requesting a child support determination, contentious proceedings
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Modul	Sachverhalt
SDG-Informationsbereich	
Lagen Portalverbund	
Einheitlicher Ansprechpartner	
Fachlich freigegeben am	
Fachlich freigegeben durch	
Handlungsgrundlage	<ul style="list-style-type: none"> • §§ 1601 folgend Bürgerliches Gesetzbuch (BGB) – Unterhaltspflicht • Gesetz zur Änderung des Unterhaltsrechts vom 21. Dezember 2007 • §§ 231 folgend Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG) – Verfahren in Unterhaltssachen • Gesetz zur Geltendmachung von Unterhaltsansprüchen im Verkehr mit ausländischen Staaten (AUG) • § 51 Gesetz über Gerichtskosten in Familiensachen (FamGKG) – Unterhaltssachen und sonstige den Unterhalt betreffende Familiensachen
Teaser	Parents are obliged to pay maintenance to their children. If no out-of-court agreement can be reached and the simplified procedure for determining maintenance has also failed, the court will set the maintenance for the child upon application.
Volltext	<p>Application for the judicial determination of maintenance for children</p> <p>Parents are obliged to pay maintenance to their children. If no out-of-court agreement can be reached and the simplified procedure for determining maintenance has also failed, the court will set the maintenance for the child upon application.</p> <p>Since the revision of the maintenance law, uniform minimum maintenance amounts apply to the children of all Federal Länder, graduated according to three age groups. The minimum maintenance is now based on the so-called material subsistence minimum, which</p>

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corresponds to twice the tax-free child allowance.

The child's actual entitlement to maintenance can only be determined on a case-by-case basis. The amount ultimately payable does not depend solely on the income of the person liable to pay maintenance. As a guide, the Higher Regional Courts provide current maintenance guidelines, which also contain a maintenance table.

Seek voluntary commitment

The new maintenance law now unequivocally states: The rights of the children have absolute priority. Despite all the conflicts in the event of separation or divorce, parents should reach a consensual agreement on maintenance claims for the benefit of their children.

Once you as parents have reached a consensus, the parent paying maintenance can make a voluntary enforceable payment commitment. This is done by notarisation by the youth welfare office or the local court.

Court proceedings

If the simplified procedure was unsuccessful or is not promising, the more time-consuming and expensive court proceedings (formerly "maintenance action") remain.

Note: If the application for the judicial determination of child maintenance is filed in connection with divorce proceedings, the family court will hear the child maintenance case as a group.

Erforderliche Unterlagen

- Income documents of the child / adolescent
- possibly own documents on income

If available:

- Income documents of the person(s) liable to pay maintenance

Voraussetzungen

The application for the court determination of child

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maintenance can be filed by the custodial parent with whom the child lives or by the person or body legally representing the child.

Attention! In principle, representation by a lawyer is required - unlike in the simplified procedure.

The application is filed either in the child's own name, as long as the parents are married to each other, or in the name of the child as its legal representative.

Possible grounds for a court application:

- simplified procedure for determining child maintenance not possible, disputed or failed
- Entitlement to more maintenance than determined in the simplified procedure
- substantial increase in the maintenance claim, for example by ten per cent (application for modification).

Note: If the income situation of the parent liable for maintenance deteriorates, the parent also has the possibility to file an application for modification.

Kosten

- Court costs: Calculation according to the Family Court Costs Act (FamGKG)
- if applicable, lawyer's fees: calculation according to the Lawyers' Fees Act (RVG)

Verfahrensablauf

You can obtain expert advice on all questions of maintenance from the youth welfare office of your town or district. In connection with ongoing divorce proceedings, you should first seek legal advice.

Filing an application

- You can file an application for child maintenance with the competent family court (Amtsgericht) via your legal representative.
- In urgent cases, you can apply to the family court for a temporary injunction.
- If you are not in a position to precisely quantify the requested maintenance - for example, because you do not have any information about the income and assets of the other parent - first request the information and

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documents about the income in writing.

- If the written request was unsuccessful, you can apply to the court to order the other party to provide the information.

Course of the proceedings

The court sends the application to the opposing party, who is given the opportunity to make a statement (application response).

The proceedings then proceed in accordance with the regulations for family disputes - laid down in the Act on Proceedings in Family Matters and in Matters of Voluntary Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit - FamFG). In principle, each party is obliged to present the facts that are favourable to him or her and, if necessary, to prove them.

The court can order both sides to provide information about their income and financial circumstances. If one side does not comply with this obligation, the court is authorised to make enquiries independently, for example with employers, the employment agency, the tax office or insurance companies.

Determining the amount

The family court sets an amount for maintenance based on the income of the parties and the age of the child. The Higher Regional Courts (Oberlandesgerichte) provide a current basis for calculation in the maintenance guidelines, to which a maintenance table is attached.

Bearbeitungsdauer

Frist

Application deadline for hearing in conjunction with the divorce case: • Filing at the latest two weeks before the court date in the divorce proceedings

weiterführende Informationen

Hinweise

Court costs and, if applicable, lawyer's fees are

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incurred when the proceedings are initiated. The amount is determined on the basis of the so-called amount in dispute (twelve times the monthly maintenance amount - but no more than the total amount claimed and amounts that were already due when the application was filed).

If the maintenance obligor has caused the court proceedings by not providing information on income and assets or by not providing complete information, the costs can be imposed on him or her in whole or in part.

Note: Find out about the possibilities of financial support from the public purse through counselling assistance and legal aid. Under certain conditions, your (divorced) spouse may also be obliged to grant an advance on legal costs.

Rechtsbehelf

Application to the family court for the determination of maintenance for a child

Kurztext

Ansprechpunkt

Zuständige Stelle

Formulare

Ursprungsportal