

EVICTION NOTICE



EVICTIONS



**south african
human
rights
commission**



BACKGROUND

The South African Human Rights Commission (SAHRC) is an independent institution established in terms of Chapter 9 of the Constitution of the Republic of South Africa, (the Constitution) to support constitutional democracy. The mandate of the SAHRC is to promote, protect and monitor the observance of human rights in the Republic. In line with its promotional mandate, the SAHRC must educate and raise awareness to promote respect for human rights and a culture of human rights. The SAHRC has developed this information sheet to provide the general public with basic information on evictions and their rights with regards to eviction proceedings.



THE RIGHT TO HOUSING

The Constitution recognises the right to adequate housing as an important basic human right, where section 26 provides that:

- 1) Everyone has a right to have access to adequate housing;
- 2) The state must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of this right;
- 3) No one may be evicted from their home or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

More information on the right to have access to adequate housing is available in the SAHRC fact sheet and the **2015 SAHRC Investigative Hearing Report on Access to Housing, Local Governance and Service Delivery**, which are available on the Commission's website at www.sahrc.org.za



WHAT IS AN EVICTION?



An eviction is the act of depriving a person of occupation of a building or structure or the land on which such a building or structure is erected, against their will. This means that if one occupies a building or structure without permission from the owner, or fails to meet the terms of their rental agreement, such a person may be ejected from a building. A building or structure includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter. No one may occupy a property belonging to someone else without the owner's permission, and if this should happen, the owner may apply for a court order to evict such occupiers from the property. During eviction proceedings, the court must consider all relevant circumstances before issuing an eviction order. A person may only be evicted through a court order. Any other eviction other than one authorised by a court is illegal and not permissible by law.

THE LAW GOVERNING EVICTIONS

Section 25 of the Constitution provides that no one may be deprived of property except in terms of law of general application and Section 26 provides that no one may be evicted from their home, or have their home demolished without an order of court and no law may permit arbitrary evictions.

In order to ensure the realisation of this right, Parliament enacted a number of laws, such as:

The Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998

The Prevention of Illegal Eviction From and Unlawful Occupation of Land Act (the PIE Act) provides for the prohibition of unlawful eviction and the procedures for the eviction of unlawful occupiers. The PIE Act recognises the right of land owners to apply to a court for an eviction order in appropriate circumstances. In terms of the PIE Act an eviction can only be ordered by a court if it is just and equitable to make that order. This means that the eviction of unlawful occupiers from land should be conducted in a fair manner taking into special consideration the rights of the elderly, children, persons with disabilities, female headed households and other vulnerable members of society.

According to the PIE Act, an unlawful occupier is any person who occupies land without the express or implied consent of the owner or person in charge; but excludes persons whose occupation of the land is permitted in terms of another Act such as the Extension of Security of Tenure Act, 62 of 1997. The following procedure must be followed before a person can be lawfully evicted from a property:

- a) The lawful owner of the property or the person in charge of the land approaches the court for an eviction order against an unlawful occupier;
- b) At least 14 days before the hearing of the proceedings, the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction – this means that should proceedings for an eviction order be instituted, the person against whom the eviction order is requested must be given notice to appear and/or defend such proceedings at least 14 court days before the date of the hearing;

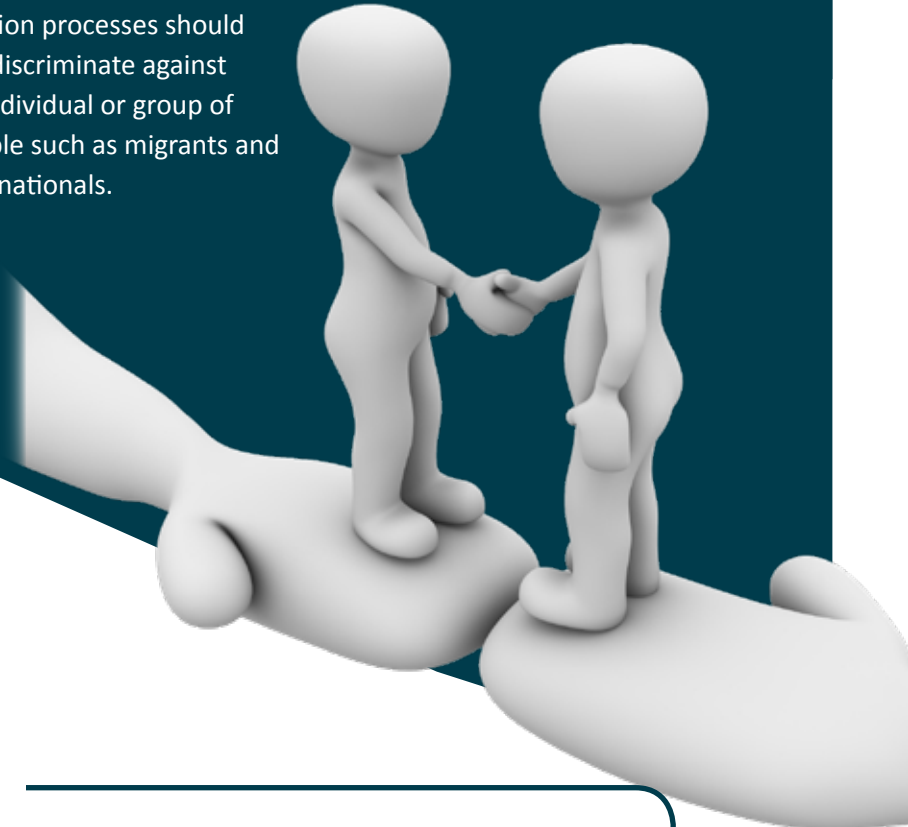
The notice must state the following:

- a. That the proceedings are to apply for an eviction order against the name of the person;
 - b. The date and time when the court will hear the matter;
 - c. The grounds for the proposed eviction; and
 - d. The rights of the person against whom such an order is sought.
- c) On the day of the proceedings and if the court is satisfied that all the requirements have been complied with, and that there is no valid defence that has been raised by the unlawful occupier, the court will grant an order for eviction and determine:
- i) A just and equitable date on which the unlawful occupier must vacate the land, having regard to all relevant factors, including the period the unlawful occupier and his/her family have resided on the land in question;
 - ii) The date on which the eviction order may be carried out if the unlawful occupier has not vacated the land on the given date.
- d) The court may also make an order for the demolition and removal of the buildings or structures that were occupied by such person on the land in question.



In addition to the legal requirements for an eviction to be undertaken, the Constitutional Court as the highest court of the Republic, has set out best practices that are important to note. These are reflected in the cases of *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others*; *Occupiers of 51 Olivia Road, Berea and 197 Main Street, Johannesburg v City of Johannesburg*; *Abahlali Basemjondolo Movement SA v Premier of KwaZulu Natal and Others* and *Occupiers of Erven 87 & 88 Berea v De Wet and Another*; in that:

- a) Evictions must be conducted in a humane manner;
- b) The State must provide temporary alternative accommodation in certain instances, such as where those that are evicted are unable to secure their own accommodation;
- c) Every property owner must engage meaningfully with evictees, individually and collectively, before commencing the eviction process; and
- d) Eviction processes should not discriminate against an individual or group of people such as migrants and non-nationals.



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The Extension of Security of Tenure Act 62 of 1997

The Extension of Security of Tenure Act, 62 of 1997 (commonly known as ESTA) gives people who lived on someone else's land, with permission from the owner, on or after 4 February 1997, a protected legal right to continue living on that land. ESTA covers people who live in rural areas, on farms and on undeveloped land. It also protects people living on land that is encircled by a township or land within a township that is marked for agricultural purposes.

Many farm dwellers are not aware of the fact that they have tenure rights, and the few that know their rights may not be familiar with remedies and support available to them should they be evicted. Often the breakdown of an employment relationship through dismissal or retrenchment leads to evictions of farm workers and their families.



ESTA does not cover the following people:

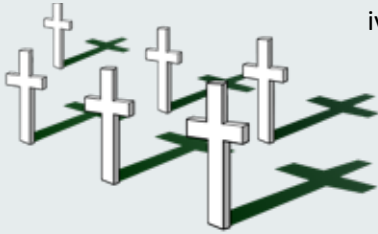
- a) People living in a proclaimed or recognised township;
- b) Land invaders;
- c) Labour tenants;
- d) People using the land for mining or industrial or business or commercial farming purposes; and
- e) People who earn a gross income of more than R5 000 per month.

What are the rights of those covered by ESTA?



- i) An owner cannot change or cancel those rights without your consent unless there are good reasons for doing so or until you have had a chance to answer any allegations made against you;

- ii) ESTA sets out the steps you can follow to strengthen your land rights. You can apply for a state grant that can be used to secure tenure rights either in the form of a development on the land where you are living or on another piece of land;
- iii) You have the right to receive visitors, to have your family live with you, to have access to water, health and education services, to receive post and other forms of communication;



- iv) You have the right to visit and maintain family graves in rural and peri-urban areas. This right must be balanced with the owner's right to privacy therefore the owner or person in charge can set reasonable conditions on how this right is exercised;
- v) You have special rights as long term occupiers. If you are 60 years and older and you have lived on the land for 10 years, or if you become disabled or sick while you were employed by the owner, you can stay on that land for the rest of your life. Long term occupiers may not normally be evicted unless they commit a violation of their obligations;
- vi) You are protected against unfair and arbitrary evictions and the Act sets out how disputes over land rights can be resolved through mediation, arbitration or the courts. In the matter of ***Nkuzi Development Association v The Government of the Republic of South Africa and the Legal Aid Board*** the court ruled that persons who have a right to security of tenure have a right to legal representation or legal aid if they cannot reasonably afford the legal costs and injustice would otherwise result.

While occupiers have a right to occupy the land in terms of ESTA, they must:

- Respect the fundamental rights of the owner;
- Prevent visitors from causing damage;
- Comply with the fair terms of the agreement with the owner.

In turn the owner has a responsibility to set reasonable conditions regarding visits to occupiers' homes and family graves.

ILLEGAL / UNLAWFUL EVICTIONS

The law protects everyone against illegal evictions. The PIE Act prohibits unlawful evictions and makes it a criminal offence for any person to unlawfully evict anyone. Anyone found guilty of unlawfully evicting anyone is liable to pay a fine or to imprisonment not exceeding two years. Evictions under the following circumstances would be illegal:

- a) Eviction without a court order – no person may be evicted without an order of the court;
- b) No person may be evicted from a house or land in which they are lawfully residing;
- c) Intimidation, threats or changing of the locks by a landlord is illegal and does not amount to lawful eviction;
- d) Farm workers who live on a farm where they work cannot be forced to leave by the employer through terminating their contract of employment;
- e) Constructive evictions are also illegal evictions. These are instances where ESTA occupiers leave the farm because conditions have been made intolerable, often through intimidation or where the occupiers have had their electricity or water supply cut off or have had their privacy repeatedly invaded.



WHAT TO DO IF YOU HAVE BEEN EVICTED OR ARE THREATENED WITH EVICTION?



There are a number of organisations that may assist when you have been evicted or are threatened with eviction. For more information or to get assistance regarding eviction matters, contact the following organisations:

Legal Aid South Africa



Legal Aid South Africa (Legal Aid SA) is a state funded institution that provides free legal advice, assistance and representation to those who cannot afford it, particularly the poor and vulnerable. Anyone who requires the services of a lawyer but does not have the necessary funds can approach Legal Aid SA for assistance. Legal Aid SA uses a means test to determine whether one qualifies for assistance. In addition to their own officials, Legal Aid SA can make use of other lawyers to assist members of the public free of charge.

Legal Aid SA can be contacted on the national toll free number **0800 110 110**; sending a Please-Call-Me to **079 835 7179**; visiting the nearest branch or through its website **www.legal-aid.co.za**.

Socio-Economic Rights Institute of South Africa



The Socio-Economic Rights Institute of South Africa (SERI) is a non-profit organisation that works to challenge inequality and realise socio-economic rights and works extensively on evictions and human rights. SERI can be contacted on the following details:

6th floor Aspern House, 54 De Korte Street, Braamfontein, 2001
Tel No: 011 356 5860
www.seri-sa.org

The Centre for Applied Legal Studies (CAL S) is both a civil society organisation and law clinic working on human rights and social justice at the University of the Witwatersrand.

CALS can be contacted on the following details:

1st Floor DJ du Plessis Building, West Campus. University of the Witwatersrand Braamfontein
Tel No: 011 717 8600

Other entities

There are also other entities such as the Rental Housing Tribunals in each province, non-governmental or faith based organisations, community advice offices with a national presence and law clinics at universities that may assist with eviction matters. Examples of such organisations include, but are not limited to, Lawyers for Human Rights, Legal Resources Centre, ProBono.Org and Black Sash. If you require assistance with any eviction related matter, you can contact their offices.

NOTES

PROVINCIAL OFFICES

Eastern Cape

Address: 3-33 Phillip Frame Road, Waverly Park, Phase 4B, Chiselhurst, East London

Tel: 043 722 7828/21/25 | Fax: 043 722 7830

Provincial Manager

Mr Abongile Sipondo

Contact: Yolokazi Mvovo

E-mail: ymvovo@sahrc.org.za

Gauteng Office

2nd Floor, Braampark Forum 3, 33 Hoofd Street, Braamfontein

Tel: 011 877 3750 | Fax 011 403 0668

Provincial Manager

Mr Buang Jones

Contact: Nthabiseng Kwaza

E-mail: nvkwaza@sahrc.org.za

Free State

18 Keller Street, Bloemfontein

Tel: 051 447 1130 | Fax: 051 447 1128

Provincial Manager

Mr Thabang Kheswa

Contact: Alinah Khompeli

E-mail: akhompeli@sahrc.org.za

KwaZulu-Natal

First Floor, 136 Margaret Mncadi, Durban

Tel: 031 304 7323/4/5 | Fax: 031 304 7323

Provincial Manager

Mr Lloyd Lotz

Contact: Kathleen Boyce

E-mail: kboyce@sahrc.org.za

Limpopo

29A Biccard Street, Polokwane

Tel: 015 291 3500 | Fax: 015 291 3505

Provincial Manager

Mr Victor Mavhidula

Contact: Mahlatse Ngobeni

E-mail: mngobeni@sahrc.org.za

Mpumalanga

First Floor, Allied Building, 34 Brown Street, Nelspruit

Tel: 013 752 8292 | Fax: 013 752 6890

Provincial Manager

Mr Eric Mokonyama

Contact: Carol Ngwenyama

E-mail: cngwenyama@sahrc.org.za

Northern Cape

45 Mark and Scot Road, Ancorley Building, Upington

Tel: 054 332 3993/4 | Fax: 054 332 7750

Provincial Manager

Ms Chantelle Williams

Contact: Zukiswa Louw

E-mail: zlouw@sahrc.org.za

North West

25 Heystek Street, Rustenburg

Tel: 014 592 0694 | Fax: 014 594 1069

Acting Provincial Manager

Mr Osmond Mngomezulu

Contact: Poppy Mochadibane

E-mail: pmochadibane@sahrc.org.za

Western Cape

7th Floor ABSA building, 132 Adderley Street, Cape Town

Tel: 021 426 2277 | Fax: 021 426 2875

Provincial Manager

Contact: Shafeeqah Salie

E-mail: ssalie@sahrc.org.za

How to contact the SAHRC:

Forum 3, Braampark, Braamfontein, Johannesburg

Tel: 011 877 3600

Website: www.sahrc.org.za

E-mail: info@sahrc.org.za / complaints@sahrc.org.za

Twitter: @SAHRCommission

Facebook: SA Human Rights Commission

