

AGRICULTURE, AQUACULTURE & FISHING SECTOR

ALERT

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Eviction of farmland occupiers

In South African law different rules apply to evictions depending on the zoning of the particular property and how the tenant obtained the rights to reside on the property. The Prevention of Illegal Evictions and Unlawful Occupation Act 19 of 1998 (PIE Act) and the Extension of Security of Tenure Act 62 of 1997 (ESTA) regulate evictions in South Africa. ESTA covers evictions in respect to farms and agricultural land.



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Eviction of farmland occupiers

In South African law different rules apply to evictions depending on the zoning of the particular property and how the tenant obtained the rights to reside on the property. The Prevention of Illegal Evictions and Unlawful Occupation Act 19 of 1998 (PIE Act) and the Extension of Security of Tenure Act 62 of 1997 (ESTA) regulate evictions in South Africa. ESTA covers evictions in respect to farms and agricultural land.

ESTA provides farm occupiers with tenure rights over farm property that they occupy but do not own. The type of occupier is a relevant consideration when it comes to evictions in terms of ESTA, as certain occupiers have more rights than others. Section 8(4) (a) of ESTA provides that if an occupier has lived on the land for more than 10 years and is 60 years or older, or if they are an employee or former employee who became disabled or sick while employed by the owner, they may occupy the land until death. Therefore, an owner cannot simply evict a long-term occupier unless the occupier has committed a breach of their obligations in terms of ESTA.

ESTA is specifically aimed at promoting the rights contained in section 25(6) of the Constitution by improving security of tenure for people whose "tenure of land is legally insecure as a result of past racially discriminatory laws". In instances where eviction of an occupier is possible, the law is clear that it is illegal for a landlord to evict a tenant without a court order.

Section 26(3) of the Constitution states that "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". The common law has also been developed to emphasize the illegality of evicting a person from their home without a court order, the courts have confirmed that an occupier cannot be evicted without following the legal process and a clause in a lease agreement or any other agreement which gives the landlord the right to remove the occupier without recourse to the legal process is unlawful and void. In *Ndlovu v Ngcobo; Bekker and Another v Jika* [2013] JOL 29808 (SCA), the court stated specifically that "No longer does the owner have an absolute right to evict the unwanted and unlawful occupier. The court is now given the discretion to evict or allow the occupier to remain in possession. The discretion is given in wide and open terms – is it, in the opinion of the court, 'just and equitable' to grant an eviction court order."

LAWFUL EVICTION

It then follows that even if a proper notice has been given but the tenant remains in occupation, the landlord cannot throw them out. The law does not allow a landlord to remove the tenant using physical force or by preventing access to the property. To lawfully evict an occupier in terms of ESTA, firstly a notice must be given to the occupier, to any adult person occupying the property, to the relevant municipality and to the Department of Land Affairs. The occupier should be informed that if they fail to vacate the premises within two months of the notice, eviction proceedings will be instituted. If the occupier does not vacate within the two months, then the landowner will have the right to bring eviction proceedings. The application for eviction through ESTA must be brought either to the Land Claims Court or to the relevant Magistrate's Court. The PIE Act has specifically outlined the factors that the court would consider in an eviction application, the criteria would also be applicable in an ESTA application.

Eviction of farmland occupiers

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Section 4(6) and (7) of the PIE Act provides that in instances where an occupier(s) has been unlawfully occupying the property for less than six months, the court would grant an eviction order if it is just and equitable to do so after considering the rights and needs of the elderly, children, disabled persons and households headed by women. If the occupier has been occupying the property for more than six months, in addition to the other factors, the court will consider whether the municipality or any other entity or person has made available alternative accommodation for the unlawful occupiers. The process is very peculiar and stringent and, as such, it is advisable to obtain

legal advice and assistance with the eviction process. Especially because courts in these types of cases are often more sympathetic to “*destitute*” occupiers than they are to landowners. It is imperative that a landowner sets out their case meticulously, especially where the eviction involves vulnerable groups such as the elderly, children and disabled persons.

If an occupier is unlawfully evicted, without a court order, the occupier can take legal action and can claim legal costs from the landlord. The occupier can also ask the court for an order to reinstate them onto the property or seek damages.

**LUCINDE RHOODIE AND
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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