



rural development & land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

EXPLANATORY NOTES: LAWFUL EVICTIONS: PORTFOLIO COMMITTEE ON RURAL DEVELOPMENT AND LAND REFORM: 23 NOVEMBER 2016

We explain a lawful eviction in terms of the Extension of Security of Tenure Act, 1997, in particular, with regard to reasons for an eviction and the procedure that must be followed. We first explain how consent to reside on a farm is obtained. An eviction that is not in accordance with the reasons and the procedure explained herein is therefore unlawful and can be interdicted from being carried out or set aside if it has already occurred.

Consent to reside on land

- Residing on land on or after 4/2/1997 (definition of "occupier" and sec. 6(1));
- Openly / continuously residing on land for 1 year presumes consent unless the contrary is proved (sec. 3(4));
- Openly / continuously residing on land for 3 years deemed to have consent (sec. 3(5)).

Reasons / Justification for evictions

- Any lawful ground, provided eviction is just and equitable (sec 8(1) taking into account the following factors:
 - o Fairness of any agreement / law owner relies on
 - o Conduct of parties relied on
 - o Interests of parties including hardship likely to be suffered if there is no eviction
 - o Existence of reasonable expectation to continue residing on farm
 - o Fairness of process followed including whether occupier was given opportunity to make representations before decision is taken
- The occupier has committed a breach of agreement which breach could have been remedied (sec 10(1)(b)),
- The occupier has committed fundamental breach of relationship such that it cannot be reasonably remedied (sec 10(1)(c)).
- The occupier has (sec. 6(3))-
 - o Intentionally and unlawfully harmed another person occupying land
 - o Intentionally and unlawfully damaged property of owner
 - o Threatened / intimidated others occupying land
 - o Assisted unauthorised persons to establish new dwellings on land.
- If right of residence is based on employment agreement, upon resignation or dismissal from employment (disputes dealt with in terms of LRA) (sec 8(2).
- Where the owner, for reasons of operational efficiency, requires the dwelling for another person (to be) employed other than the occupier (sec. 10(3)(c))

- After death of occupier. (Spouse / dependants may be evicted but with 12 months' notice (sec 8(5)). *(In case there are no individual contracts of employment)*
- In an instance where there has not been a breach by the occupier, the court can still order an eviction if in its determination, it is just and equitable to do so (sec. 10(3)(c) and 11(2)).

Procedure for evictions

- An eviction can only be carried out in terms of a court order (sec 9(1))
- After making a decision to evict, owner must, 2 months before, notify, in writing-
 - o the occupier
 - o the municipality
 - o provincial office of the Department (DRDLR), of the intention to apply to court for an eviction order (sec 9(2)(d)).
- The Court must request a probation officer / officer of the Department / any official, as determined by the Minister, for a probation report. The report must indicate:
 - o Availability of suitable alternative accommodation
 - o How an eviction will affect constitutional rights of affected persons eg education of children
 - o Any hardships likely to be suffered by occupier.

Effect of eviction order

- Owner must compensate occupier for structures erected / improvements made / standing crops (sec. 13(10(a))). See factors to be taken into account ((a)(i)-(iii))
- Owner must pay occupier outstanding wages (sec 13(1)(b))
- Court may order owner to allow occupier an opportunity to demolish structures / to tend and harvest standing crops (sec 13(1)(c)).

Restoration after unlawful eviction

A person unlawfully evicted may apply to court for (sec 14)-

- restoration of residence / use of land
- Repair / reconstruction / replacement of structures damaged /demolished / destroyed
- restoration of services the evicted person had
- payment of compensation for damages
- costs of application.

Urgent applications for evictions

A court may still order an eviction if approached on an urgent basis if (sec 15)-

- there is imminent danger of substantial injury / damage if respondent is not forthwith removed
- there is no other effective remedy available
- the likely hardship for the owner is exceeds that of occupier
- adequate arrangements have been made for reinstatement if final order is not granted. *The municipality and the Department must still be served with notice.*

END