



INFORMATION DOCUMENT ON HOW TO DEAL WITH UNLAWFUL OCCUPATION OF LAND

1. INTRODUCTION

For purposes of this document, a clear distinction must be made between unlawful access to property and “squatting” in the normal course of events on the one hand and a sudden and orchestrated invasion of property by people on the other hand. This document provides a detailed description of both. In the case of a sudden and orchestrated occupation of property, swift and determined action must be taken against the people concerned. This will require the participation of all role players.

2. TRESPASSING VS UNLAWFUL OCCUPATION

There is apparently much uncertainty among land owners regarding the difference between trespassing or occupation and what the correct action would be in respect of trespassing and unlawful occupation.

Trespassing means to gain access/entry to someone’s property without his/her consent. Trespassing is regulated by the Trespassing Act nr 6 of 1939 which prohibits access to land without permission from the lawful owner or occupier, and constitutes a criminal offence. This implies that the police could be called to remove such a person.

Unlawful occupation takes place when there is a measure of permanency and where a person has already erected a structure with the intention of living on the land. When this happens, the person is not merely a trespasser but an unlawful occupier, as contemplated in the Prevention of Illegal Eviction and the Unlawful Occupation of Land of 1998. The implication of this is that such a person may only be evicted in terms of a court order. Eviction other than in terms of a court order constitutes a criminal offence for which the owner could face a prison sentence if convicted.

It is therefore extremely important to call the police as soon as possible before the trespasser can erect a structure or establish any permanency.

3. LEGISLATION RELATING TO LAND OCCUPATION AND EVICTIONS

The eviction of persons is regulated by law. The following legislation regulates different situations and is applicable for purposes of this document:

- The Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997 (ESTA));
- The Prevention of Illegal Evictions and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998 (PIE));
- The Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996);
- The Trespass Act, 1959 (Act No. 6 of 1959).

These Acts are often difficult to interpret and to enforce and are intended to assist both land owners and the police.

3.1 Prevention of Illegal Eviction and Unlawful Occupation of Land Act

This Act (Act No. 19 of 1998) came into effect on 5 June 1998 and repealed the Prevention of Illegal Squatting Act in its entirety. Squatting is therefore no longer a criminal offence. Land owners will in future no longer be able to make use of common law remedies, such as spoliation orders, to remove squatters from their land. Squatters (i.e. unlawful occupiers) may now only be removed by means of a court order issued in terms of this act.

- **Where is the Act applicable?**

This Act is applicable to all land, rural as well as urban, private land as well as state land.

- **Who is protected by the Act?**

The Act protects the so-called unlawful occupiers, namely persons who occupy land without the permission of the owners or person in charge of the land. If these persons do in fact have permission to live there, the situation is regulated by the Extension of Security of Tenure Act.

- **What kind of protection do unlawful occupiers enjoy?**

The Act stipulates that unlawful occupiers may only be evicted in terms of the provisions of this legislation. Eviction in a manner other than in terms of a court order issued in terms of this Act constitutes a criminal offence and the owner or person who is guilty thereof could be fined and/or face imprisonment.

An owner who plans to evict unlawful occupiers is required to give them at least two weeks' prior written notice of his/her intention to do so. Notice must also be given to the municipality in whose jurisdiction the land is situated. Such notice must mention that an application would be made for a court order to evict the person, as well as the date and time when such application would be heard, the reasons for the application and the fact that the unlawful occupiers have the right to appear in court to defend the case and also that they were entitled to apply for legal aid.

After the two-week period, the owner or person in charge of the land can approach any division of the High Court or a Magistrate's Court in whose jurisdiction the land is situated for an eviction order. The court is not obliged to issue an eviction order but has discretion in this regard. In exercising its discretion, the court must take certain matters into account. Factors to be considered include the rights and needs of the elderly, children, disabled persons and households headed by women. If the unlawful occupier has been living on the land for longer than six months, the court must also consider whether alternative land is available or could be made available to them. If the court, in light of all these factors, is satisfied that it would be fair and just to issue an eviction order, the court will set two dates. The first is a date on which the person(s) must vacate the land, while the second is the later date on which the eviction order would be executed if such person(s) had failed to vacate the land on the first date. When the court sets these dates, it will take into account, amongst other factors, the period of time that the unlawful occupiers had been living on the land. The court could also order the structures to be demolished.

- **Urgent application for eviction**

The Act makes provision for an owner or person in charge of land to approach the court on an urgent basis for an eviction order. The owner will have to prove that there was a real and imminent danger that he/she could suffer serious loss or injury if the person or persons were not evicted. Furthermore, the owner would have to prove that he as owner would suffer greater deprivation than the unlawful occupier would suffer should the latter in fact be evicted.

4. EVICTION FROM LAND

Removal from land is always executed in terms of a court order, irrespective of whether the person is a labour tenant, an occupier (lawful or unlawful), a farm worker or even an unlawful occupier (squatter). (NB: Eviction and arrest must not be confused.)

The eviction of an occupier must take place in terms of the relevant legislation otherwise the eviction would be illegal. There are different categories of occupiers, such as labour tenants, lawful and unlawful occupiers and farm workers. It is important to distinguish between lawful and unlawful occupiers because the procedures to be followed in each situation differ.

5. OCCUPIERS

It is important to note that any person who comes to live on agricultural land with the consent of the owner or person in charge of such land, shall qualify as an occupier in terms of the Extension of Security of Tenure Act. In the case where, for example, seasonal labourers live on the farm temporarily and then refuse to leave the farm on expiry of their contract, the procedures as prescribed by this legislation would also have to be followed for eviction purposes. It is therefore possible for persons who had initially resided lawfully on the farm with the necessary consent to effectively “occupy” such a farm by refusing to leave after expiry of their contracts. In such a case a competent attorney should be approached as soon as possible to commence eviction proceedings.

5.1 Legal occupiers

A legal occupier is a person who lives on the land with the land owner's permission.

- **Occupier**

An occupier is a person who lives on the land with the owner's permission. Such permission does not have to be expressed (written or oral); it could also be implicit. An example of explicit permission is where an occupier lives on the land after he/she had requested permission from the owner to do so. An example of implicit permission is where a person lives on a farm with the full knowledge of the owner. If the owner does not take any steps to remove the occupier, such owner has granted implicit permission through his/her actions. The occupier in this case must also earn a gross salary of not less than R5 000.00 per month. ESTA protects the rights of the occupier. ESTA does not protect persons who use the land for industrial, mining or commercial agriculture purposes. The Act is also not applicable to land proclaimed or recognised as townships.

- **Labour tenant**

A labour tenant is a person who lives on the farm and has a right to use the owner's farm (or other land belonging to the owner) and who, in exchange, works for the owner (just as the person's parents and grandparents had done). The labour tenant can provide labour via someone else, e.g. the father is a labour tenant who uses the farm and, in exchange for this, his son or daughter works for the owner. A farm worker who is paid mainly in cash for his/her labour does not qualify as a labour tenant. Farm workers must do the work themselves, which is a further factor which distinguishes them from a labour tenant. The right of labour tenants and their partners (family members, employees) to occupy the land is protected by the Labour Tenants Act.

5.2 Unlawful occupiers

An unlawful occupier is someone who lives on the land without the explicit or implicit permission of the land owner. Occupiers who fall under the ESTA legislation are not unlawful occupiers. The rights of an unlawful occupier are protected by the PIE legislation. This category of occupier would normally be known as squatters. The PIE legislation replaced the Prevention of Illegal Squatting Act, 1951.

5.3 Trespassers

A trespasser is someone who gains entry to the property without the owner's permission. A trespasser may be arrested by the police. When a trespasser lives on the land/property, he/she must be regarded as an unlawful occupier. "Lives" means that the person has a home somewhere or stays permanently at a certain place.

A court that finds a person guilty of trespassing in terms of section 1(1) of the Trespass Act, 1959, may order that the trespasser be immediately removed from the relevant land. This does NOT include the power to order structures to be removed.

6. PROCEDURE

In most circumstances a police officer will be requested to deal with the "problem" of an occupier when a land owner lodges a complaint with the Community Service Centre of the SAPS station in the area.

The police officer who deals with the complaint must determine whether the relevant occupier falls within one of the above categories. Where an occupier enjoys the protection of the Labour Tenants Act, PIE or ESTA, the police officer

must recommend that the complainant consult an attorney to activate the eviction process in terms of the relevant legislation.

Evictions that are not executed in accordance with the relevant legislation are not legal and constitute a contravention of the law.

6.1 Eviction of labour tenants

Labour tenants may only be evicted in terms of an order of the Land Claims Court (section 5 of the Labour Tenants Act). Such an order is obtained by the owner by way of a court application.

6.2 Eviction of legal occupiers

Eviction of lawful occupiers can take place in terms of an eviction order issued by a magistrate, land or High court.

An eviction in terms of the PIE legislation can take place in three phases:

- The owner terminates the right of occupation in terms of section 8;
- The owner secures a court order if the occupier fails to vacate the land within the set period of time;
- The eviction order is executed.

Where an occupier has lived on the land since 4 February 1997 and had done nothing wrong in terms of the PIE legislation (malicious damage to property, intimidation, etc.), the owner must prove that suitable accommodation is available, as prescribed in ESTA.

6.3 Eviction of unlawful occupiers

Unlawful occupiers can only be evicted if an eviction order is issued by the Magistrate's Court or High Court. The owner may apply to the court for an eviction order. It would constitute a criminal offence to receive or negotiate any payment, directly or indirectly for arranging for or organising or allowing a person to occupy land without the permission of the owner or the person in charge of the land.

7. EXECUTION OF EVICTION ORDERS

The sheriff of the court will execute eviction orders. In some cases where there are sufficient indications that the sheriff and his/her officials may be exposed to injury, death or damage to property, the South African Police Service (SAPS) will protect them and fulfil a law and order function.

8. TRESPASSING

Trespassers must be arrested and appear in court as soon as possible. The owner or person in charge of the property must lodge a formal complaint at his/her nearest police station. Then it is clear that the suspect(s) had been living for some time on the property, the owner must advise that the occupier would be evicted by way of a court order.

The owner or person in charge of the property must sign an affidavit stating the following as a minimum:

- The competence of the complainant (e.g. the owner, lawful occupier or person in charge);
- That the suspect(s) had gained access to the land (or the building);
- That the owner, lawful occupier or person in charge had not granted permission;
- That the suspect had no lawful cause to be on the property (e.g. where the suspect leased the land from the complainant or is a bona fide visitor of the lawful occupier – ESTA).

9. LAND INVASIONS

When the police are informed of a large-scale land invasion, it is important that action be taken as soon as possible. Land invasions are usually accompanied by violent occupation of land.

9.1 What the owner can do

The owner could obtain an urgent eviction order in terms of PIE.

9.2 What SAPS can do

SAPS must investigate to ascertain whether any of the following offences had been committed:

- Common law offences: Assault, murder, arson, malicious damage to property or any attempt to commit these offences;
- Trespassing – Section 1(1) of the Trespass Act, 1959;
- Public violence: Section 17 of the Riotous Assemblies Act, Act No. 17 of 1956;
- Intimidation in terms of section 1 of the Intimidation Act, Act No. 72 of 1982;
- Payment for orchestrating unlawful occupation – Section 3 (1) of the Prevention of Illegal Eviction and Unlawful occupation of Land, 1998 (Act No. 19 of 1998);

- Conspiracy to commit any of the above-mentioned offences – Section 18 (2)(A) of the Riotous Assemblies Act, Act No, 17 of 1956.

In all cases where land invasions are policed, a detailed record must be kept for evidence purposes.

10. SPECIFICATION IN THE EVENT OF LAND INVASIONS

The following procedures were cleared with the police at national level for action taken by land owners or persons authorised to act on behalf of the owner:

- Any action that is indicative of unlawful occupation of farms must immediately be reported by the land owner or his/her authorised representative to the local police and a complaint of trespassing must be lodged in terms of section 1 of the Trespass Act (Act No. 6 of 1959).

If the land owner has any information or has received any threats which are indicative of a farm invasion, this must also be reported to the local police without delay.

- If a period of time had already elapsed before such occupation was noticed, the land owner or his representative must apply to the court for an eviction order in terms of the Prevention of Illegal Eviction and Unlawful Occupation Act (Act No. 19 of 1998) and the incident must also be reported to the nearest police station. Persons who intend to leave their farms for a while must make the following arrangements:
 - ◆ Authorise someone to report such incidents on his/her behalf;
 - ◆ Make arrangements with his/her legal representative to approach the court for an eviction order, especially after hours; and
 - ◆ Provide his/her legal representative with the necessary authorisation to take legal action on his/her behalf;
- In the case of the police, the following instructions were issued by the Joints Priority Committee (before NOCOC) to the police and defence force:
 - ◆ All cases that are indicative of farm trespassing should be dealt with on an urgent basis by the police;
 - ◆ All trespassers on such property should be immediately arrested and appear in court;
 - ◆ In case of conviction of the trespassers, prosecutors must be requested to immediately apply for an urgent eviction order in terms of section 2(2) of the Trespass Act, 1959; and

- ◆ Orders for the eviction of occupiers must be executed by the local sheriff of the court with the assistance of the police to ensure that law and order prevail during such eviction.
- The following operational procedures are also in place and organised agriculture's representatives in the Local Joints Priority Committee must become involved in the execution thereof:
 - ◆ The Provincial Joints will task the Local Joints to immediately arrest trespassers on farms and smallholdings in accordance with the statutory procedures as set out herein;
 - ◆ If an eviction order is obtained and the occupiers continue to live on the farm in contravention of such court order, the police may assist the sheriff in removing such occupiers in terms of a court order;
 - ◆ The ground level Joints must provide all role players immediately with information relating to unlawful farm occupations; and
 - ◆ The police will also communicate with the land owners regarding the procedure as needed.
- Intelligence will, on a weekly basis, monitor the climate which could lead to unlawful farm occupation and will observe the groups that could become involved in orchestrating such actions. Land owners should take the following action:
 - Report all unlawful land occupations immediately to the local police station and provide them with all relevant information regarding the occupation;
 - Report the confirmed land occupation to your provincial agricultural union;
 - If the local police fails to respond to a complaint regarding unlawful occupation, the matter must immediately be reported to the provincial agricultural union, which will then have to deal further with the complaint;
 - If reaction at provincial level is not satisfactory, the land occupation complaint, as well as the failure of the police to respond, must be reported fully and in writing to Agri SA, which will then raise the matter with the National Joints Priority Committee.
- Suggestions for farmers:
 - Be aware of what is happening on your land.
 - Take action as soon as possible against a person who erects any type of residential structure on your land without your permission.
 - Immediately lodge a complaint with the police and, where structures have already been erected, instruct a competent attorney to commence with eviction procedures. Make sure that your attorney is familiar with the provisions of this Act.

- Effect notices on your boundary fences stating: “Trespassing is a criminal offence. Trespassers shall be prosecuted”. In this case implementation of Agri SA’s Farm Access Protocol and the erection of protocol boards could be of value (a detailed description of the protocol and an example of the protocol board are included).

11. FARM ACCESS PROTOCOL

In light of the attacks on farm dwellers which continue unabated, no visitor will in future be allowed access to farm land except in the following instances:

- **SECURITY SERVICES**

This included SAPS and the SA National Defence Force.

- Preferably per prior arrangement.
- In clearly marked vehicles and uniforms.
- Report immediately to the owner when accessing/entering the property and show identity document.
- Inform the owner of the nature and duration of the proposed visit.
- Land owner undertakes to co-operate with security forces in the execution of their duties.

- **OTHER OFFICIALS WHO IN TERMS OF STATUTORY PROVISIONS HAVE THE POWER/RIGHT TO ACCESS PROPERTY TO CARRY OUT THEIR DUTIES:**

This group includes inspectors of the Department of Labour, Home Affairs, Health, Agriculture, etc.

- Only per prior arrangement/appointment, permission from the owner or other person in charge of the property.
- When the property or premises is accessed, it must immediately be reported to the owner or the person in charge of the property.
- The official must identify him/herself properly; explain the nature of his/her business and how long he/she would remain on the property.
- The official will not be able to undertake any tasks or actions other than those for which permission was granted.
- If the official does not succeed in making an appointment because he cannot make contact with the owner or person in charge of the property, or because the request for an appointment was denied, he/she should approach the local farmer association or district agricultural unions or SAPS for assistance.

- **PRIVATE PERSON WHO IN TERMS OF STATUTORY REQUIREMENTS MAY VISIT THE FARM**

This includes people who, for example, have a right in terms of the Extension of Security of Tenure Act to visit occupiers on a farm.

- Only per prior arrangement/appointment with the owner or person in charge of the property.
- The visitor may only use the previously identified route to the farm worker houses or ancestral graves.
- There must be a clear agreement regarding the duration of the visit.
- The visitor may not undertake any activities other than those for which he/she had been granted permission.

- **PRIVATE PERSONS WITHOUT STATUTORY RIGHTS**

This includes, for example, researchers, political organisers, union organisers, religious workers, etc.

- Per arrangement to meet farm workers at a suitable public venue away from the farm.
- Farmers will make it possible for workers to attend such meetings, including the provision of transport, if practical, to the relevant venue.
- Only in highly exceptional cases will the persons be allowed to access the property and then with a very explicit arrangement with the owner or person in charge of the property and subject to such conditions as may be prescribed.

- **GENERAL**

- Agricultural organisations and the broad farming community's approach would be to stabilise the security situation using this modus operandi and will not use the protocol to unreasonably deny access to people who have a bona fide right to enter the property or who have requested access to the property.
- Officials and persons who wish to gain access to the property must understand the emergency situation which currently exists on farms and must not make themselves guilty of provocative or threatening behaviour, while access to farms shall be limited to what can reasonably be regarded as essential or desirable.

- **NOTICE BOARD**

The following notice board was accepted by Agri SA's Provincial Change for use.

<p>REG VAN TOEGANG VOORBEHOU RIGHT OF ADMISSION RESERVED</p>  <p>PLAAS PROTOKOL FARM PROTOCOL</p>	<p>CBA 19</p>
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The notice board consists of two parts, namely a Farm Protocol section and a section reserved for a farm number.

12. AUTHORISATION DOCUMENTS

Find enclosed the following documents which members can use to authorise someone to act on their behalf should the land owner not be present.

- Authorising a person to act on behalf of the land owner;
- Authorising an attorney to act on behalf of the land owner.