

## **Extension of Security of Tenure Act (ESTA)**

### **Does ESTA apply to all land in South Africa?**

As previously mentioned, PIE applies to all land throughout the Republic of South Africa, unless the Extension of Security of Tenure Act 62 of 1997 (ESTA) applies.

Therefore, in terms of Section 2 of the Act, ESTA applies to “all land other than land in a township established, approved, proclaimed or otherwise recognised as such in terms of any law, or encircled by such a township or townships, but including:

- (a) any land within such a township which has been designated for agricultural purposes in terms of any law; and
- (b) any land within such a township which has been established, approved, proclaimed or otherwise recognised after 4 February 1997, in respect only of a person who was an occupier immediately prior to such establishment, approval, proclamation or recognition.

Land in issue in any civil proceedings in terms of this Act shall be presumed to fall within the scope of the Act unless the contrary is proved.”

### **Who is an occupier in terms of ESTA?**

ESTA deals with the eviction of lawful occupiers or occupiers of rural or peri-urban land whose occupation was previously lawful, subject to certain conditions.

An occupier is defined as a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding:

- (a) a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); and
- (b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and
- (c) a person who has an income in excess of the prescribed amount which is R5 000.00.

### **What is meant by “consent”?**

Consent means express or tacit consent of the owner or person in charge of the land in question, and in relation to a proposed termination of the right of residence or eviction by a holder of mineral rights, includes the express or tacit consent of such holder.

### **Who can institute eviction proceedings in terms of ESTA?**

An owner or person in charge of the land in questions may institute proceedings in terms of ESTA.

In terms of the Act, an owner means the owner of the land at the time of the relevant act, omission or conduct, and includes, in relation to the proposed termination of a right of residence by a holder of mineral rights, such holder in so far as such holder is by law entitled to grant or terminate a right of residence or any associated rights in respect of such land, or to evict a person occupying such land.

A person in charge means a person who at the time of the relevant act, omission or conduct had or has legal authority to give consent to a person to reside on the land in question.

### **Who may not be evicted in terms of ESTA?**

Long terms occupiers are those persons who have resided on a farm for more than 10 years and are over 60 years of age or cannot provide labour to a land owner as a result of ill health, disability or injury.

Long term occupiers' rights may only be terminated if they have:

- (a) intentionally and unlawfully harmed any other person occupying the land;
- (b) intentionally damaged property of the farm;
- (c) engaged in behaviour which threatened others who occupy the land;
- (d) assisted other unauthorised people to establish new dwellings on the farm;
- (e) breached a condition or term of their residence with which they are able to comply, but have failed to do so despite being given one month's notice to comply;
- (f) committed such a fundamental breach of the relationship between the parties that restoration is impossible.

### **When will a court grant an order for eviction?**

ESTA provides different requirements in respect of an occupier who became same before 4 February 1997 and one who became an occupier after that date. Therefore, each case will have to be assessed on its facts to ascertain the circumstances in which a court may grant an eviction order against an occupier.

### **Basic outline of opposed eviction:**

1. the owner must terminate the right of residence of the occupier. The underlying basis for the termination must be legal e.g. the expiration of a lease agreement or a fair dismissal where the occupier's occupation on the farm is linked to their employment;
2. the owner must provide the occupier, the relevant municipality and the Department of Land Affairs two months' notice of the intention to evict the occupier. This is in the form of a notice of motion and supporting affidavit and must be served by the sheriff;.

3. a Probation Officer's Report must be requested from the local district office of the Department of Land Affairs. A Probation Officer will be appointed who will compile the report. The court will take this report into consideration whether to evict the occupier;
4. The occupier then has an opportunity to oppose the eviction and file answering papers;
5. The owner has a final opportunity to file replying papers;
6. Once the essential legal requirements have been complied with, a date for the hearing of the matter may be requested from the court;
7. If the parties are unable to settle the matter before the court date, the matter will be argued at court who will make a decision on the matter.

