

Prevention of Illegal Eviction (PIE)

Does PIE apply to all land in South Africa?

Yes, PIE applies to all land throughout the Republic of South Africa, unless the Extension of Security of Tenure Act 62 of 1997 (ESTA) applies. This definition applies to any building or structure on municipal, private and state-owned land.

Who can make use of PIE?

An owner or a person in charge of the land may approach the court in terms of PIE. An owner is defined in the Act as *“the registered owner of land, including an organ of state”* and a person in charge of the land in question is defined as *“a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question.”*

Who is an unlawful occupier in terms of PIE?

An unlawful occupier is defined as a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of ESTA and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996.

Is there any other way to carry out an eviction?

No, PIE was specifically enacted to prevent situations where land owners take the law into their own hands in order to evict unlawful occupiers. There is a common misconception that an owner is entitled to turn off the electricity, change the locks on the property or physically remove the unlawful occupier and their goods from the property. Should any of these methods be carried out, it is the land owner who may be liable for criminal and/or civil charges.

Where do I start?

The starting point lies at Section 4(2) of PIE which provides that 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.

The procedure for the serving of notices and filing of papers is as prescribed by the rules of the court in question. However, if a court is satisfied that service cannot conveniently or expeditiously be effected in the manner provided in the rules of the court, service must be effected in the manner directed by the court: Provided that the court must consider the rights of the unlawful occupier to receive adequate notice and to defend the case.

Section 4(5) of the Act sets out the structure and content of the notice of proceedings contemplated above. Therefore, the notice **must**:

- (a) state that proceedings are being instituted in terms of subsection (1) of the Act;
- (b) indicate on what date and at what time the court will hear the proceedings;
- (c) set out the grounds for the proposed eviction; **and**
- (d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid.

It is important to note that in terms of Section 4(6) of the Act, if an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women.

However, in terms of Section 4(7) of the Act, if an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

When will the court grant an eviction order?

If the court is satisfied that all the requirements of Section 4 of the Act have been complied with and that no valid defence has been raised by the unlawful occupier, it **must** grant an order for the eviction of the unlawful occupier, and determine:

- (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and
- (b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).

In determining a just and equitable date on which the eviction order may be carried out, the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.

Can the court make an order that the property be demolished or removed?

Yes, the court which orders the eviction of any person in terms of Section 4 of the Act may make an order for the demolition and removal of the buildings or structures that were occupied by such person on the land in question.

However, any order for the eviction of an unlawful occupier or for the demolition or removal of buildings or structures in terms of Section 4 of the Act is subject to the conditions deemed reasonable by the court, and the court may, on good cause shown, vary any condition for an eviction order.

Does the landowner carry out the eviction themselves if the unlawful occupier does not vacate after the date ordered by the court?

No, the sheriff of the court is the only person who may attend to the eviction of an unlawful occupier. A court may, at the request of the sheriff, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal subject to conditions determined by the court: Provided that the sheriff must at all times be present during such eviction, demolition or removal.

Basic outline of opposed eviction

1. the owner must legally terminate the lease agreement between the parties. The underlying basis for the termination must be legal e.g. the expiration of a lease agreement or a material breach of the lease agreement by the occupant;
2. a Section 4(2) application in the form of a notice of motion and supporting affidavit must be served on the occupant and the relevant municipality and must be served by the sheriff. This must be served on the occupant at least 14 days before the court date. This application will detail the date of the court appearance and advise the occupant when to file their intention to oppose and answering affidavit.
3. The occupier then has an opportunity to oppose the eviction and file their answering affidavit;
4. The owner has a final opportunity to file replying papers;
5. 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.

