

It's an Act

a brief overview

The Extension of Security of Tenure Act (ESTA), which became law on 28 November last year, with retrospective effect to 1 February, aims to give greater security of tenure to people who live on the land. It provides certain protections against eviction for those who live on land that belongs to someone else. The Act also gives people occupying the land the right to apply to the Minister of Land Affairs for a subsidy to facilitate his or her security of tenure by acquiring land or rights in land.

In the past people were evicted from land, especially farmland, at the will of the owner. Their only protection was the common law requirement of 'reasonable notice'. As a result, people were evicted by the courts regardless of whether they had alternative accommodation, which caused them and their families hardship.

Under the new Act, such evictions are no longer possible if a person can show that he or she is an 'occupier' as defined in the Act, and does not live on land surrounded by a township. An eviction is defined as depriving someone of residence on, or use of, land or water.

An 'occupier' is anyone who has been given consent to live on someone else's land, or has the right to do so in terms of any other law, from 1 February 1997. Occupiers include people who work the land themselves and do not employ people who are not family members.

Christo Loots introduces the Extension of Security of Tenure Act and summarises its main points.

Those using or intending to use the land for industrial, mining, commercial or commercial farming purposes, or who earn more than R5 000 a month, are not covered by the Act.

Rights and duties

The Act gives occupiers access to services agreed on with the owner or person in charge of the land. It gives them security of tenure, the right to receive mail, the right to family life in keeping with their culture, access to water and educational or health services, and the right to visit and maintain family graves.

However, the occupier may not:

- harm anyone else occupying the land,
- damage the property of the owner or person in charge;
- threaten or intimidate others who lawfully occupy the land or land nearby;
- enable or help unauthorised people to set up dwellings on the land, or disrupt work on the land,
- waive his or her rights under the Act unless in terms of the Act itself or an order of a court.

The owner or person in charge can impound an animal which is trespassing on the land, if he or she has given the occupier at least 72 hours' notice to remove the animal

Right of residence¹

An occupier's right to live on the land can be terminated for any lawful reason, as long as it is fair. The agreement between the owner and the occupier granting the right of residence must be a fair one, as must the procedure, which must give the occupier a chance to make representations before the decision to terminate.

Other factors that must be taken into account are the comparative hardship caused to the occupier and owner by, respectively, terminating or not terminating the right of residence; and whether there is a reasonable expectation that the agreement will be renewed.

An employee's right of residence which arises solely from an employment contract may be terminated if he or she resigns or is dismissed in accordance with the LRA. A dispute over whether employment has been lawfully terminated must be settled with reference to the LRA. Until it is settled, an occupier cannot be evicted.

In addition, an occupier's right of residence cannot be terminated if he or she has lived on the land for ten years and is 60 years of age or older.

The ten-year rule also applies if the occupier is an employee or former employee of the owner who cannot work because of bad health, injury or disability. If such an occupier dies, the right of residence of his or her spouse or dependants can only be terminated if 12 months' written notice to leave the land is given.

To get these rights, the occupier must not have broken any fair agreement with the owner, and there must be no breach of the relationship between owner and occupier so fundamental that it cannot be remedied.

Limits on eviction

People who occupy land can be evicted only if an order of court has been issued in terms of the Act. This will be issued if the occupier's right of residence has been lawfully and fairly terminated, and if the occupier has not vacated the land during the notice period given by the owner. After terminating the right of residence, the owner must give at least two months' written notice of the intention to obtain an eviction order. This must give the grounds for the eviction and be sent to the occupier, the municipality where the land is situated, and the head of the provincial office of the Department of Land Affairs.

A very important requirement is that no eviction can take place unless the occupier has suitable alternative accommodation. This does not apply if he or she occupied the land after 4 February 1997. In this case, a court may issue an eviction without alternative accommodation being available, if it is just and equitable to do so.

Unlawful evictions

If a person is not lawfully evicted in terms of the Act, he or she can go to court to recover the right to live on or use the land, or for damages. If any building, structure or thing used by the occupier before his or her eviction has been damaged or destroyed, the court can order it to be repaired, rebuilt or replaced.

The court can order any services to which the person had a right to be restored, as well as the payment of



The Act gives occupiers the right to family life.

compensation and legal costs. Damages may include those for suffering or inconvenience caused by the eviction.

If an occupier vacates the land freely and willingly, knowing his or her rights under the Act, he or she cannot apply to court to have the rights of residence restored, or for compensation and damages.

Urgent eviction proceedings

The Act allows an owner or person in charge of land to apply to court for the removal of an occupier pending a final eviction order.

The court may grant this if substantial injury to a person or damage to property will result if the occupier remains on the land, and there is no other way of dealing with the problem.

The court will consider whether the

likely hardship caused to the owner by allowing the occupier to stay on the land is greater than the hardship suffered by the occupier because of his or her removal. Arrangements must be made for the occupier to be reinstated on the land if a final eviction order is not granted.

Penalties

Any person who evicts another person from land without an order of court issued in terms of the Act commits a crime and is liable to a fine or imprisonment, or both. ★

Christo Loots is an attorney. A division of his firm specialises in land reform legislation with specific reference to the protection of farmworkers and labour tenants.