



Resisting Evictions in South Africa:

A Legal and Practical Guide

SERI

socio-economic rights institute
of south africa



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about this guide

The other resources in the toolkit are:

1 Community Organiser's Guide - A guide to assist CBOs to organise effectively in order to facilitate social change in their communities.

2 Protesting Your Rights: The Regulation of Gatherings Act, Arrests and Court Processes - A guide to inform people of their right to protest.

3 Making Local Government Work: An Activist's Guide - A guide to help people regarding the most effective ways to engage with local government.

This is a guide about resisting eviction. It explains your rights and the law regarding evictions, and gives practical advice on how to resist them.

It is a resource for individuals, households and communities who are facing eviction from their homes, as well as for community-based paralegals, community-based organisations (CBOs), social movements, activists and lawyers who deal with evictions.

The guide is one of the resources in a toolkit aimed at informing individuals, communities and CBOs of their rights. The documentary film *Dear Mandela* portrays the struggles of young activists from the South African shackdwellers' movement Abahlali baseMjondolo, who have resisted mass evictions in the face of violence and intimidation. This guide can be used by CBOs and community members together with the film to facilitate discussion about resisting evictions.

Evictions can be lawful or unlawful, depending on the process followed. There are a number of different strategies you can use to resist an unlawful eviction, including using the media, organising a protest, contacting local politicians, connecting with social movements, faith-based organisations or CBOs, or going to court.

If someone goes the legal route to evict you, you should try to get a lawyer and will need to go to court to oppose the eviction. However, getting a lawyer is often very difficult. You have the right to speak for yourself in court if you need to.

This guide has been developed so that people know their rights when it comes to evictions, and can act to protect them, with or without a lawyer or legal representative.

DEFINITION OR DESCRIPTION



Information with this icon provides definitions or descriptions of key terms or phrases.

IMPORTANT INFORMATION TO KNOW



Information with this icon alerts you to important information that you should know.

1 what is an eviction

Evictions happen all over South Africa – in towns, cities and rural areas. An eviction is the removal of someone from their **home** against his or her will.

This is often done by the owner of a **property** (private owner or the state), a representative of the owner or managing agent, or the executor of a deceased estate, for example.

A **home** is a place of residence where you are physically present to rest, eat and sleep. The right to a home includes the right to undisturbed privacy, security, dignity and peace within it. It can be any place, from a house or a flat to a shack in an informal settlement.



Property can refer to a house, a building, a flat, a piece of land, an informal settlement, a farm etc.



SOME EXAMPLES OF WHEN EVICTIONS HAPPEN:

- » A homeowner defaults on their bond and the bank repossess their property and sells it to someone else, who then evicts the previous owner or tenant.
- » A tenant is no longer able to pay the rent or services at a property and the landlord cancels their lease.
- » A new owner of a property that has tenants or occupiers living in it, wants to refurbish or redevelop it for a higher rental, and evicts the existing tenants.
- » People occupy a vacant portion of property which they do not own and the owner applies for an eviction order.
- » An informal settlement is on land the state or a private developer wants to use for a formal housing development or a mall.

Eviction refers to both the process of obtaining an eviction order (see section 2 below), as well as the action of removing someone from their home against his or her will.

An eviction is lawful when it is done in terms of the law, and when the removal of a person is authorised by an order of the court. It is unlawful when it is not done in terms of the law, and when there is no court order authorising the removal.



Only the owner or the person in charge of the property (the person who has legally been given the right to allow people to live on the property e.g. a landlord or managing agent) may apply for an eviction order. The state can also apply for an eviction order, even if it is not the owner of the property, under certain circumstances.

2 what the law says about evictions

In South Africa the Constitution and the law give important rights and protections to people facing eviction from their homes. In addition, the Emergency Housing Programme has been developed to provide for people in emergency circumstances, including people who face homelessness as a result of evictions.

THE CONSTITUTION

In the past, only the common law, case law passed down by judges over time, and the rules of property law governed evictions. This meant that it was usually very easy for an owner to evict someone from their property or land.

The Constitution is now the supreme law in South Africa. This means that it is the highest law in the country and everyone must respect, protect, promote and fulfil the rights set out in it.

The right of access to adequate housing is contained in section 26 of the Constitution and has two parts to it. The first part - sections 26(1) and 26(2) - says that "everyone has the right to have access to adequate housing" and that the state must take "reasonable legislative and other measures, with its available resources, to achieve the progressive realisation of the right".

The second part in section 26(3) says that "no one may be evicted from their home, or have their home demolished, without an **order of court**" that allows the eviction. A court can only give an order allowing an eviction after "considering all the **relevant circumstances**", which means the judge must think about all of your personal circumstances and how the eviction will affect you and your family.

The right of access to adequate housing is closely related to other socio-economic rights contained in the Constitution so that evictions negatively affect not only the right to adequate housing, but can also affect the rights to human dignity, security of the person, privacy, health, and access to education, amongst others. If an eviction would cause a breach (violation) of these rights, then this is a circumstance that is relevant to whether an eviction order should be granted.

An **order of court** or court order is written direction by a judge or judges, which must be obeyed by the people to whom it applies. It can set out the rights of people in a particular situation, or require or authorize that certain steps be taken, or not taken, by one or more parties to a case.



Court orders can also change the dates on which cases can be heard, and require that reports or new evidence be submitted to the court on any relevant issue.

Relevant circumstances could include anything that is connected to the issue of whether an eviction should happen. However, courts normally want to know about the number of people affected (especially women, children and the elderly) and the impact on their access to jobs, schools etc.; what the owner wants to do with the property; the possibility that people will be made homeless; and the likelihood of alternative accommodation being provided by the municipality.





The PIE Act prohibits unlawful evictions, and makes them a criminal offence. This means that any person who unlawfully evicts someone is committing a crime and may have to pay a fine or go to prison for 2 years if found guilty.

THE PIE ACT

To put section 26(3) of the Constitution into practice, Parliament passed the Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act (referred to as the PIE Act or PIE) in 1998.

The PIE Act applies to all land in South Africa and puts in place processes and procedures which owners or the state must follow if they want to evict people lawfully.

In terms of the PIE Act a court can only order an eviction if it is sure that the eviction will be “**just and equitable**”, which means it must be fair and reasonable taking into account the rights and interests of all the parties.

The PIE Act only applies to people who are **unlawful occupiers**.

In many cases people who are unlawful occupiers were previously **lawful occupiers**, for example people who used to be tenants renting a flat or owners of bonded houses which have been repossessed by the bank.

An **unlawful occupier** is someone who does not have permission or consent from the owner or person in charge of the property, or any other legal right, to live there.



A **lawful occupier** is someone who has a legal right to live on the property because they own it, or have the owner's permission to occupy it, or a lease agreement.



EXAMPLES OF **LAWFUL OCCUPIERS** INCLUDE:

- » The owner of a property who has a title deed, which is an official document registering who the owner of a property is at any point in time.
- » People with the owner's consent to live on a property.
- » Occupiers protected in terms of the **Extension of Security of Tenure Act 62 of 1997 (ESTA)**.
- » Tenants with a **valid lease agreement** from the owner, or person in charge, to rent a property.

A **lease agreement** is a written or verbal contract between a landlord and a tenant which sets out terms of the relationship, including the time period that a tenant will live at a property and the rental amount to be paid by the tenant.



The **Extension of Security of Tenure Act (ESTA)** gives certain people who lived on someone else's land on or after 4 February 1997, with permission from the owner, a secure legal right to carry on living on the land. It applies mainly to farm dwellers and those living on rural land.



EXAMPLES OF UNLAWFUL OCCUPIERS INCLUDE:

- » People who move onto the property without the owner's permission.
- » Tenants whose lease has been cancelled or terminated but who remain on a property.
- » Former owners of homes which have been repossessed by the bank and sold-in-execution of a debt.

As an unlawful occupier, you still have certain legal rights and protections. Often people think that unlawful occupiers are breaking the law and

therefore do not have rights, however this is NOT true and unlawful occupiers have a number of important rights in terms of the PIE Act and the Constitution.

Importantly, the PIE Act requires a court to have regard to various factors, such as whether the occupiers include vulnerable people (for example the elderly, children and woman-headed households), the duration of occupation and the availability of alternative accommodation or whether the state can provide alternative accommodation in instances where occupiers are unable to obtain alternatives on their own.

EMERGENCY HOUSING PROGRAMME

The National Housing Code contains a housing programme called the Emergency Housing Programme which applies to people in “emergency circumstances”. This includes people being evicted or threatened by eviction, whose houses are to be demolished, being displaced due to conflict or unrest and living in life threatening conditions.

Municipalities are constitutionally responsible for providing temporary alternative accommodation to people who would otherwise be made homeless as a result of an eviction. They must budget for emergency housing situations and must apply to the provincial government for funding in terms of the Emergency Housing Programme.



Even though you might be an unlawful occupier, you still have rights. You cannot be evicted without a court order that has been lawfully obtained.

3 when is an eviction unlawful?

In South Africa it is not uncommon for property owners, landlords, or state officials to try to forcefully remove people from their homes without following the requirements and process set out in law. This is often referred to as an **illegal, unlawful or forced eviction**.

For example, an eviction would be unlawful if:

- » You are residing lawfully on the property.
- » There is not a valid court order allowing an eviction. An interim **interdict** obtained against people “threatening to occupy land” is not the same as an eviction order, and so is not a legal basis for an eviction.
- » A **sheriff** is not present at the time of the enforcement of the eviction order.
- » The owner or landlord intimidates or threatens you to leave, changes the locks, or cuts off the services to the property without a court order. This is called a **constructive eviction** and is illegal in terms of the Rental Housing Act. The Constitutional Court has also decided that any serious interference with someone’s ability to live in peace in their home constitutes an eviction.
- » You have laid a complaint against the landlord at the **Rental Housing Tribunal**. If you lodge a complaint with the Tribunal about an unfair practice, your landlord is not allowed to evict you (even if they have obtained a court order) until the complaint has been ruled on, or until 3 months have passed, whichever comes first.
- » You are removed from the property and charged with trespassing. Trespass charges are criminal in nature and should not be used as a way to avoid eviction proceedings.
- » You are working and living on a farm and the owner terminates your contract and says you must leave.

Section 6 of this guide provides a number of practical steps you can take to prevent an unlawful eviction from happening, to stop it while it is taking place, or to get back into your home once it has taken place.

An eviction is lawful when the owner or person in charge of the property undertakes an eviction in terms of the law and follows the legal requirements set out in the PIE Act or in terms of another relevant law.

An **interdict** is a court order preventing someone from doing something, or directing them to do something.



A **sheriff** is an independent officer of the court who carries out all orders of the court.



A **constructive eviction** means anything done or not done which might force someone to leave a property without a court order.



Rental Housing Tribunals are free dispute resolution bodies set up by provincial governments to assist landlords and tenants. They resolve complaints through mediation and arbitration, and provide advice and information on all aspects of the landlord and tenant relationship.



4 what

is the lawful process for an eviction?

In the South African court system, an eviction process can be brought by an *action* or *application* procedure in either a High Court or Magistrates Court. The process below sets out both these procedures but focuses on the most common one, the application process.

Saying that an eviction is lawful does not mean that it is acceptable or right, only that the owner has followed the legal requirements as set out in the law.

The procedure for a lawful eviction set out in the PIE Act is important to know. If it is not followed correctly, it can mean that you have a procedural defence against the eviction. A court order granted without compliance with the PIE Act would be invalid, and would entitle you to a rescission (cancellation) of the eviction order.

See pages 12 and 13 of this guide for a flowchart of the **8 steps in the lawful eviction process**.

The eviction process below in 8 steps:

- 1 **Step 1:** Meaningful engagement
- 2 **Step 2:** Eviction proceedings launched in court
- 3 **Step 3:** Notice of motion or summons served on occupiers
- 4 **Step 4:** Occupiers file notice of intention to oppose
- 5 **Step 5:** Section 4(2) eviction notice served on occupiers
- 6 **Step 6:** Application heard in court
- 7 **Step 7:** Eviction order served on occupiers
- 8 **Step 8:** Eviction carried out by the sheriff

STEP 1

MEANINGFUL ENGAGEMENT

In terms of the law, before an owner, person in charge of the property or government department begins eviction proceedings there must be **meaningful engagement** between them and the unlawful occupiers.

The concept has developed through Constitutional Court judgments handed down over the years, including *PE Municipality, Olivia Road, Abahlali* and *Joe Slovo*.

This means that **before** an eviction is undertaken, there must be a process to discuss other ways to resolve the dispute. This could include a discussion on whether the owner's interests can be met another way rather than through an eviction, or whether the state has temporary alternative accommodation that the occupiers can move to.

Importantly, engagement must be done at the individual/household level as well as at the collective/community level.

Meaningful engagement is a dispute resolution process where people can discuss and shape options and solutions to their disagreements in a constructive and honest way.



STEP 2

EVICITION PROCEEDINGS LAUNCHED IN COURT

If the meaningful engagement process does not result in an agreement between the parties then the owner or person in charge may make an application for an eviction order, either in a Magistrates Court or in a High Court.

The people involved in a case are referred to as parties to the proceedings.

In application proceedings the owner or person in charge of the property who is bringing the eviction application is the **applicant**, while the occupiers are **respondents**. In action proceedings the person bringing the eviction is the **plaintiff** and the occupiers are **defendants**. The municipality may also be cited as a respondent or defendant.

An **applicant** or **plaintiff** is the individual or organisation that starts legal proceedings against others, who are referred to as **respondents** or **defendants**.



STEP 3

NOTICE OF MOTION OR SUMMONS SERVED ON OCCUPIERS

In terms of the Rules of Court, the owner must get the sheriff to serve a **summons** or **notice of motion** on the occupiers informing them of the eviction application and the date of the court hearing.

A notice of motion is generally accompanied by a **founding affidavit** written by the owner or person in charge of the property, or their legal representative. A summons is often accompanied by particulars of claim.

Both a founding affidavit and particulars of claim set out the facts the applicant or plaintiff thinks entitles them to the order they want. Founding affidavits are sworn under oath, meaning that the person who has signed them certifies that they are true. Particulars of claim are not sworn. They set out the facts that will be proved by witnesses later.

A **founding affidavit** is a written statement used in court which sets out someone's case. An affidavit must be signed by the person who promises that it is a true and factual account.



Occupiers are often sent lawyer's letters and notices to vacate the property. This is not the same as an eviction order and does not mean they have to leave the property. This is just a demand.

NOTICE OF MOTION

eg 1

IN THE HIGH COURT OF SOUTH AFRICA
(SOUTH GAUTENG, JOHANNESBURG DIVISION)

Case Number: 50423/14

In the matter between:
BRICK PROPERTIES Applicant
and
OCCUPIERS OF TUDOR MANSIONS, 24 HILLBROW STREET, BEREA Respondents

NOTICE OF MOTION

TAKE NOTICE that the Applicant intends to make an application to the above Court for an order in the following terms:

1. That the Respondents and all these persons holding occupation through them at 24 HILLBROW STREET, BEREA (hereinafter referred to as "the property") vacate the property as contemplated by Section 4(1) of the Act 19 of 1956.

TAKE NOTICE THAT the grounds for the eviction are more fully set out in the Founding Affidavit deposed by JOHN CRONJE.

TAKE FURTHER NOTICE that the Applicant has appointed **LAW PARTNERS**, 26 Frickler Road, Illovo as the address for her/himself, as its attorney of record at which it accepts notice and service of all process in these proceedings.

HINDLY TAKE NOTICE FURTHER that if you intend opposing this application you are required: 28 to meet Applicant's attorney in writing within 5 days of service hereof, 2) and within fifteen days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any, (3) and further that you are required to appear in such affidavits at the address referred to in Rule 9(5)(b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the 21st day of November 2011 at 10:00 or such date thereafter as will be notified to the Respondents in terms of the Notice in terms of Section 4(2) to be served upon the Respondents.

DATED at ILLOVO on this 29th day of September 2011.

LAW PARTNERS
Applicant's Attorney
26 Frickler Road, Illovo
Ref: Law/50423/14

To: THE REGISTRAR OF THE ABOVE HONORABLE COURT
To: OCCUPIERS OF TUDOR MANSIONS
RESPONDENTS
24 HILLBROW STREET, BEREA

See page 25

A **summons** or **notice of motion** is an official notice that sets out what order the applicant or plaintiff wants the court to make, and when and where they will approach a court to make this order.





*An eviction notice must be served by the sheriff in a manner approved by a court at least **14 days** before the date of the court hearing.*



An eviction notice must be in a language you understand. If it is not, then this can be used to get a postponement.

STEP 4

OCCUPIERS FILE NOTICE OF INTENTION TO OPPOSE

Step 4 in the eviction process provides occupiers with an opportunity to oppose or defend the eviction application. This is a formal process that requires notifying the applicant's attorney before a certain date (included in the notice of motion) and going to court to file a notice of intention to oppose or defend the application. See section 5 of this guide for more information on how to do this, as well as an example of a notice of intention to oppose.

If the occupiers do not file a notice of intention to oppose the application, it will be set down in court and the judge may grant a default eviction order to the owner or person in charge of the property.

STEP 5

SECTION 4(2) EVICTION NOTICE SERVED ON OCCUPIERS

In terms of section 4(2) of the PIE Act, the owner or person in charge of the property must serve the occupiers with a written notice of the eviction application. This notice is referred to as a section 4(2) notice, an eviction notice or a 14 day notice. It is an additional notice to the one described in Step 3. In the High Court, the section 4(2) notice must be served separately from the notice of motion and founding affidavit. In the Magistrate's Court, they can be served at the same time.

The owner or person in charge of the property will make an *ex parte* application (an application in which only one party is involved) requesting the court to authorise them serving the section 4(2) notice on the occupiers. In authorising this order the court must consider whether the method of service chosen will be "effective". In other words, the court must consider if the method of service is likely to result in the notice coming to the attention of the occupiers.

This means that sometimes an eviction notice will be served with a court order attached. This is NOT an

eviction order but is the order that guides how the sheriff must serve the section 4(2) notice.

A section 4(2) notice must include the following information:

- » Place, date and time of the court hearing.
- » The grounds or reasons for the eviction. This is sometimes in the form of a founding affidavit or particulars of claim.
- » Explanation that the occupier has the right to appear in court to oppose the eviction application and that they have a right to apply for legal aid.
- » List of institutions providing legal assistance.

The eviction notice must also be served on the municipality which has jurisdiction over the property.

Sometimes an owner will just get the sheriff to serve the eviction application on the occupiers and will not serve a section 4(2) notice. This is not proper process in terms of the PIE Act, and can be used to get a postponement.

STEP 6

APPLICATION HEARD IN COURT

When served with an eviction notice the occupiers should attend court on the day of the hearing to oppose the eviction application. There are a number of legal defences against an eviction which can be raised at court, described in section 5 of this guide.

If homelessness may result from an eviction being granted the municipality must be **joined to** the eviction application. If the owner has not joined the municipality, the judge should postpone the hearing in order for this to happen. The judge may also decide to dismiss the application completely. This means that a further hearing of the application is refused and the owner would need to start the process from the beginning.

To be **joined to** an application means to become part of the application.



STEP 7

EVICION ORDER SERVED ON OCCUPIERS

If the court grants the eviction order then the sheriff must serve a copy of the order on the occupiers and must explain what it means and when they should vacate the property. This must happen **BEFORE** the actual eviction is carried out.

Often the court order will state that the eviction will take place 30 days from the date of that the order being made, which means the occupiers should be notified as soon as possible in this time period.

If the provision of alternative accommodation has been ordered by the court, then the occupiers should be relocated before the eviction date set out in the order.

The **South African Board of Sheriffs** is the statutory body that monitors and disciplines sheriffs. Complaints against sheriffs should be lodged in writing to the Board. See the Resources section at the end of this guide.



STEP 8

EVICION CARRIED OUT BY THE SHERIFF

There are a number of requirements that should be followed when an eviction order or a warrant of ejection is executed or put into effect:

- » The sheriff or deputy sheriff must be present during the eviction and have a court order or a warrant of ejection for the specific property.
- » The sheriff must act in accordance with the code of conduct published by the **South African Board of Sheriffs** and should at all times treat the occupiers with dignity and respect.
- » The sheriff, the police and anyone else involved in the eviction should not cause unreasonable damage to property.

All Sheriffs and Deputy Sheriffs must carry a valid Identification Card issued by the South African Board for Sheriffs while on duty and must be able to produce it on request.

STEP 1 MEANINGFUL ENGAGEMENT

Occupiers remain on the property.

Owner or person in charge of property tells occupiers to leave, cancels lease or gives notice to vacate the property.

No agreement or resolution is reached and the occupiers remain on the property.

Meaningful engagement occurs between the owner and the occupiers about the occupiers' occupation of the property.

Agreement or resolution is reached and the occupiers remain on the property.

Occupiers voluntarily leave the property.

END

Occupiers voluntarily leave the property.

END

STEP 2 EVICTION PROCEEDINGS STARTED

Eviction application proceedings are started in court.

STEP 3 NOTICE OF MOTION OR SUMMONS SERVED

Sheriff serves occupiers with a notice of motion or summons.

Occupiers do not oppose the application.

Court hearing takes place before a Judge or Magistrate.

Judge grants default eviction order.

END

Judge postpones hearing to join the municipality to proceedings and/or to require the occupiers to be present at court.

START

Unlawful occupation of a property occurs by, for example:

- » People who moved onto the property without the owner's permission.
- » A tenant whose lease has been cancelled or terminated but who remains on a property.
- » The former owner of a house, which has been repossessed by the bank and sold-in-execution of a debt, who remains on the property.

what

is the lawful process for an eviction?

STEP 4

OCCUPIERS FILE
NOTICE OF INTENTION
TO OPPOSE

Occupiers file notice of intention to oppose or defend the application.

STEP 5

SECTION 4(2)
EVICTION NOTICE SERVED

Sheriff serves section 4(2) eviction notice on occupiers.

Occupiers file answering affidavit setting out their case.

STEP 6

APPLICATION HEARD IN COURT

Court hearing takes place before a Judge or Magistrate.

Judge dismisses the application.

Judge grants eviction order.

Judge postpones the hearing to join the municipality and/or allow the occupiers to find legal representation.

END



If the Judge grants the eviction order subject to the relocation of the occupiers to alternative accommodation, this must happen BEFORE the eviction order is executed by the Sheriff on the property.

END

STEP 8

EVICTION CARRIED OUT
BY SHERIFF

Sheriff carries out eviction in terms of the court order.

STEP 7

EVICTION ORDER
SERVED

Sheriff serves eviction order on occupiers before the eviction date.

5how

to oppose a lawful eviction

There are a number of things you can do to oppose an eviction application that has been brought against you in a court.

GET LEGAL ASSISTANCE

Eviction cases are often complicated and you should get advice and assistance from a community-based paralegal, social movement or CBO. You should also try to get a lawyer to assist. It is important to find a lawyer you trust, and who will fight for you. Be wary of lawyers who ask for money upfront. If possible, speak to different lawyers to find out if you are being given good advice.

If you cannot afford a private lawyer there are a number of places you can go to get free legal representation, including Legal Aid SA, university law clinics, *pro bono* (free) lawyers at private law firms or legal NGOs. See the Resources section of this guide for further information.

It may, however, be difficult to get a lawyer. In terms of the South African legal system, ordinary people are supposed to be given the opportunity to represent themselves in court if they cannot find a lawyer. If you know your rights, you can go to court and explain to the judge that you do not have a lawyer but are trying to find one that will represent you. The judge is likely to postpone the case until you can get a lawyer.

FILE A NOTICE OF INTENTION TO OPPOSE THE EVICTION

It is important to seek legal assistance as soon as you receive a summons or notice of motion, so that a lawyer can help you draft the notice of intention to oppose or defend the application while there is still time.

As mentioned in section 4 of this guide, this is a formal process that requires notifying the applicant's attorney before a certain date (included in the notice of motion) and going to court to file a notice of intention to oppose or defend.

If you are unable to get legal assistance you can request guidance from the **Registrar** or **Clerk** of the court on how to draft this notice of intention to oppose or defend and to file it in court.

Important information that should be on this notice includes:

- » The court heading as it appears on the notice of motion.
- » The intention to oppose or defend the application.
- » The physical address at which you will accept notice and service of all further court documents.

It is also important to make a copy of the court file. This requires an ID book or card, money to photocopy the file, and the index number of the case (which will be on the notice of motion or summons).

*The **Registrar** and the **Clerk** are administrative officers of the High Court and Magistrate Court respectively. They maintain the court's records and files and open new case files. The offices of the Registrar and Clerk are open to the public and court files are public documents. Parties to a case should always be granted access to their case file but will be required to pay for photocopying.*





NOTICE OF INTENTION TO OPPOSE

IN THE MAGISTRATE'S COURT FOR THE MAGISTERIAL DISTRICT OF
JOHANNESBURG
(HELD AT JOHANNESBURG)

CASE NO: 280/15

In the matter between:

ANGLO AMERICAN CORPORATION LTD Applicant

and

SIPHO ZULU First Respondent

ALL UNLAWFUL OCCUPIERS OF
ERF 123 MAIN STREET, JOHANNESBURG Second Respondent

CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY Third Respondent

NOTICE OF INTENTION TO OPPOSE

PLEASE TAKE NOTICE that the First and Second Respondents hereby give notice of their intention to oppose the above application.

PLEASE TAKE FURTHER NOTICE that the First and Second Respondents appoint the **SERI LAW CLINIC** as their attorneys of record and will accept service of all documents and process in this matter at the address set out below.

DATED AT JOHANNESBURG ON THIS 5 DAY OF MARCH 2015.

See page 26

GET PERSONAL AND HOUSEHOLD CIRCUMSTANCES OF THE OCCUPIERS

At court it is important to present the personal circumstances of everyone facing eviction, including their names, ages, income, how they came to live at the property, how long they have lived at the property and the impact the eviction will have on them.

If you have a lawyer, they should set out the personal circumstances of the occupiers in an **answering affidavit** and file it in court. The personal circumstances of all the occupiers should be laid out. If only one household is affected, a single answering affidavit signed by one household member and discussing all the household circumstances is enough.

If a large number of households are affected, it may help the court for you to organise all the household circumstances into one answering affidavit accompanied by **confirmatory affidavits** signed by each adult occupier named.

If you do not have a lawyer and are unable to draw up these legal documents, you can tell the judge or present the information in any written form, and it should be taken into consideration.

*An **answering affidavit** is a written court statement that provides an answer to allegations set out in a court application.*

*A **confirmatory affidavit** is an affidavit in which a person states that they confirm facts set out in someone else's affidavit.*





CHECKLIST: PERSONAL AND HOUSEHOLD CIRCUMSTANCES

For each individual or household, the following information should be put before the court:

1. Identity and household income

- » Full name (as it appears on birth certificate, ID or passport), age and gender of each person (including children) in the household, and how they are related to each other.
- » Whether people are employed. This means describing whether people have full-time formal jobs or do casual work, such as piece-jobs.
- » Average monthly income of each working person (how much money they make).
- » If anyone in the household collects an old age grant, child support grant or foster care grant.
- » Based on all this, the average monthly household income.
- » Any other persons not living in the household who rely on household members for regular financial support. For example, if someone in the household sends money to help support an elderly parent, children, or younger brothers or sisters who live in a rural area. If this is the case, then you should tell the court this and say how much money you send on a regular basis.

2. Length of time living at the property

- » How each household came to live at the property and where people lived previously.
- » How long each household has lived on the property.

3. Special circumstances

- » Number of women in the household.
- » Number of children in the household.
- » If there are pensioners in the household.
- » If any household members are disabled or seriously ill.
- » If the household is headed by a woman or if a woman is the main provider for the household.
- » If the household is a child-headed household.

4. Likelihood that people will become homeless if evicted

- » Where else the household members could live if evicted.
- » If there is any other accommodation affordable to the household.
- » Whether any of the residents has been evicted before.

5. Difficulties faced by household members if forced to live elsewhere

- » For example, if working members of the household would move further away from jobs and pay more in transportation costs or if children would have to change schools.

ATTEND THE COURT HEARING

If you are served with an eviction notice you should file a notice of intention to oppose or defend the application and attend court on the day of the hearing.

Attending the hearing does not mean you agree to the eviction but rather shows your intention to oppose or defend it. If you do not go to court to oppose the eviction application (because you did not get a notice or do not have a lawyer or were afraid) the judge may grant a **default order** or **summary judgment**. If this happens, you will need to get the case number, go to the clerk of the court and file an application for another judge to rescind (undo or set aside) the order. This is quite a difficult process and requires the assistance of a lawyer.

You should attend at court even if you do not have a lawyer or only received the notice a few days before the court date. If this is the case, you should ask the judge for a postponement until you can find legal representation.

Often the best strategy in an eviction application is to delay the process until you have found a lawyer, organised the community, contacted the media and mobilised support.

RAISE DEFENCES AGAINST THE EVICTION

It is important to raise defences against the eviction. These can relate to problems with the way the process has been carried out (**procedural defences**) as well as to why the eviction should not take place (**substantive defences**). Procedural defences, if successful, will generally result in the case being delayed. Successful substantive defences will result in the case being dismissed altogether.

The first step is to put your personal circumstances before the court. Remember that if the eviction relates to more than one individual or household, you have to put the personal circumstances of all of the individuals and households facing eviction before the court.

Substantive defences can relate to:

- » How an eviction would affect you, your family or your community.
- » Whether the eviction would be just and equitable in the circumstances.
- » Whether there is a threat of homelessness and lack of alternative accommodation.

Procedural defences can relate to:

- » The lack of meaningful engagement.
- » The fact that the summons was not served on occupiers.
- » A lack of legal representation.
- » An eviction notice not being received 14 days before the court date.

If the judge finds there have been problems with the process he or she could decide to stop it.

A default order or summary judgment

is when a judge grants relief in one party's favour, without the other party being heard. For example, if an eviction application is not opposed a default eviction order may be granted to the owner.



How

to resist an *unlawful* eviction



As discussed in section 3 of this guide, it is common for property owners, landlords, or state officials to try to forcefully remove people from their homes without following the requirements and process set out in law.

Remember, an eviction is **unlawful** if:

- » There is no court order authorising the eviction.
- » You are residing lawfully on the property.
- » The sheriff is not present at the time of the enforcement of the eviction order.
- » The legal requirements and process set out in the PIE Act have not been followed.

There are a number of practical steps you can take to prevent an unlawful eviction from happening, to stop it while it is taking place, or to get back into your home once it has taken place. This includes going to court. The checklist below describes 10 practical things you can do to resist an unlawful eviction.



EVICITION ORDER

JOHANNESBURG, 25 June 2013
BEFORE THE HONOURABLE JUDGE VAN OSTEN

IN THE SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)

CASE NO: 20130145
PII NO: 0

In the matter between:-

MOYALA MAHELE SOLOMON	1 st Applicant
MOYALA MOPONE POETLA	2 nd Applicant

and

UNLAWFUL OCCUPIERS OF ERF 179 BEEBA TOWNSHIP, JOHANNESBURG	1 st Respondent
CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	2 nd Respondent

HAVING read the documents filed of record and having considered the matter:-

IT IS ORDERED THAT:-

1. The First Respondent and all those holding title under him/her or who occupy the property herein mentioned to the Applicants, are to vacate the property on or before 31 July 2013.
2. The Sheriff of the Court is hereby authorised after expiry of the above time period stipulated above, to obtain the assistance of the Red Ants or other persons to assist the Sheriff to effect the eviction order herein.
3. The Sheriff of the Court is further authorised to do all that is necessary under the law and pursuant to this order to change the locks of the property herein and to remove the First Respondent and to remove all belongings of the First Respondent and to lock the premises and hand over occupation of the property to the Applicants.
4. Costs of this application are to be borne by the First Respondent.

BY THE COURT

JAGINSTAR



Sometimes the people trying to evict you will use violence and force. Security guards may use batons or the police may use rubber bullets. While it is important to show that you know your rights and the law, and to do whatever is necessary to resist the unlawful eviction, it is also important to ensure that you, your family and community are safe.

See page 28



CHECKLIST: 10 THINGS TO DO TO RESIST AN UNLAWFUL EVICTION

1. Show that you know your rights and the law

- » During an unlawful eviction it is important to let whoever is carrying out the eviction know that you know your rights and the law. Let them know that section 26(3) of the Constitution prevents an eviction without a court order and that the PIE Act process has not been followed.

2. Get a copy of the court order

- » Ask to see or get a copy of the court order. If there is no court order, explain that you know it is unlawful to evict someone without a court order in terms of section 26(3) of the Constitution and the PIE Act. Say you are going to contact the sheriff and the police to report an unlawful eviction.
- » If there is a court order, ask for a copy or write down the name of the court, the name of the judge or magistrate and the case number. Carefully inspect the court order to see if it is a real court order and that it applies to the specific

property and occupiers who are being evicted. Different courts have different formats for their orders, but all court orders must contain the following: name of the court, the place it sat, case number, date the court made the order, name of the Judge or Magistrate, the parties, and the stamp and signature of the Registrar or Judge (see page 28 for an example).

- » With this information, you can call or visit the Clerk or Registrar at the court and ask to confirm that they have a record of the case number and order. If the court does not have a record of the case number and order, you may assume that the court order is fraudulent. You can use this information to make an urgent application to court to prevent the unlawful eviction.

3. Collect information

- » In addition to the court order, gather as much information as possible on the people present and involved in the eviction, including the owner, managing agent or sheriff and any police officers

or private security. For example, get the badge numbers and names of police officers.

- » Also take down the names and contact details of any witnesses to the eviction.

4. Take photos and videos

- » If possible, take photos and videos of the unlawful eviction with your phone or camera, including all those present at, and involved in, the eviction. Take photos or videos of any structures being demolished, before and after demolition, as well as any damaged possessions or injuries sustained during the eviction.

5. Call a lawyer

- » Try to get a hold of a lawyer as soon as possible but make sure it is someone who is willing to listen to your story and whom you trust. Tell the people who are trying to evict you that you are calling a lawyer and that they cannot carry on with the eviction until your lawyer arrives.



CHECKLIST: 10 THINGS TO DO TO RESIST AN UNLAWFUL EVICTION (CONTINUED)

6. Alert the police

- » Call the police to alert them to the fact that an unlawful eviction is taking place without a court order or the sheriff present. Often the police do not know how to recognise an unlawful eviction or are sometimes just unwilling to stop an eviction. Take a note and/or photos of the badge numbers of the police officers present and threaten to report them if they are participating in or fail to stop an unlawful eviction. If the police are acting unlawfully you can lay a complaint with the Independent Police Investigative Directorate (IPID). See the Resources section at the end of this guide.

7. Call the sheriff

- » A sheriff or deputy sheriff must be present to execute an eviction order. Find out the name and cell phone number of the sheriff and let them know that an unlawful eviction is taking place without a court order or the sheriff present.

Tell the people who are carrying out the illegal eviction that you are calling the sheriff and that they cannot carry on with the eviction until he or she is present.

8. Contact journalists and politicians

- » Contact journalists and try to get them to come to the eviction and monitor the situation. This will put pressure on the people who are trying to illegally evict you. You can get a CBO, social movement or NGO to assist in making contact with journalists interested in covering the eviction. You can also notify the media directly, by sending a press release to journalists or broadcasting the events on Facebook and Twitter, if you have easy access to the internet
- » Sometimes politicians, for example a local ward councillor, are able to assist in stopping an unlawful eviction from taking place. You should contact them for assistance if this is the case.

Other times politicians might be supporting the eviction.

9. Get help from neighbours and community members

- » Ask your neighbours to assist you. Try to organise a public meeting and get as many members of the community as possible to the site of the eviction to try to stop it from happening.
- » Contact any CBOs, faith-based movements or social movements and alert them to the unlawful eviction taking place, asking them for support on the ground and with whatever contacts they have in the media, government or elsewhere.

10. Go to court

- » You can go to court to stop whoever is conducting the unlawful eviction and to allow you to reoccupy your home. The section below describes in more detail how to do this.

RESISTING AN UNLAWFUL EVICTION IN COURT

Often you will not be able to stop an unlawful eviction before or while it is happening. In this case you should consider going to court. However it is important to continue to try the other approaches and actions set out above. The threat of going to court, as well as pressure from different sources, can sometimes force the owner or landlord to stop the eviction and let you back onto the property.

You can apply to a Magistrates Court or a High Court for an urgent interdict (court order that prevents someone from doing something) to stop whoever is conducting the illegal eviction.

You can also go to court to get a *mandament van spolie*, also known as a spoliation order, to allow you to reoccupy your home if the owner does not allow you to do so.

Often an interdict and a **spoliation order** are obtained at the same time, during the same court process. They can be obtained from a court on an **urgent basis**, on the same day of the eviction, after hours or over weekends. During court hours (9am till 5pm) you can approach the Registrar's Office to set down the urgent application.

If it is after 5pm, you should ask the security guard at the court to tell you which judge is allocated to the urgent roll and to give you the contact number of the judge's clerk.

When you apply for an interdict or a spoliation order, you will have to do an affidavit giving as much detail as possible about the people carrying out the eviction and anyone else who was present, how it occurred, and what the impact has been on you, your family and/or your community. For example, you would explain how you have to sleep on the street, or how your possessions were damaged or destroyed during the unlawful eviction. You can show the judge photos or video of the eviction.



You will need a lawyer to help you get an urgent interdict or a spoliation order as the court rules for urgent applications are difficult to navigate, especially after working hours or over the weekend.

If you get an urgent interdict and/or spoliation order and the people evicting you ignore it, then they are in **contempt of court**. You should phone the police and explain that a court order is being ignored. You can also go back to court and ask the judge to have the people arrested.

*If something is taken away from you unlawfully (spoliated) you can go to court to get it returned quickly. This includes your home after an unlawful eviction. The court will issue a **spoliation order**, which is based on the idea that people – even government officials or the police – should not be allowed to take the law into their own hands.*



*A judge will expect an illegal eviction to come to his or her attention quickly, and for legal action to be taken on an **urgent basis**, normally within a few days of the eviction.*



Contempt of court means that a person is ignoring or refusing to follow a court order, which is a criminal offence.





CHECKLIST: INFORMATION FOR A SPOILIATION APPLICATION

In a spoliation application the following information should be put before the court:

- » Date, time and place (address) where the eviction occurred.
- » The nature of the dwelling or dwellings from which people were evicted e.g. flat, shack, house.
- » Details of all people involved in carrying out the eviction, including any police or private security.
- » How many households and the total number of people evicted.
- » Full name (as it appears on birth certificate, ID or passport), age and gender of each person (including children) in each of the affected households.
- » Number of women, children, pensioners, sick or disabled people evicted.
- » Details of any damage to possessions, including shacks if they were demolished during the eviction.
- » Details of any injuries sustained during the eviction.
- » How long the residents had been living on the property before they were evicted.
- » A detailed description of how the eviction happened.



7 resources

LEGAL ASSISTANCE AND ADVICE

Legal Aid South Africa

National

Tel: 0800 110 110

<http://www.legal-aid.co.za>

Centre for Applied Legal Studies (CALs)

University of the Witwatersrand, Johannesburg

Tel: 011 717 8600

<http://www.wits.ac.za/law/cals>

Lawyers for Human Rights (LHR)

Pretoria, Johannesburg, Cape Town, Durban and Upington

Tel: 012 320 2943 (Pretoria Office)

<http://www.lhr.org.za>

Legal Resources Centre (LRC)

Johannesburg, Cape Town, Durban and Grahamstown

Tel: 011 836 9831 (National Office)

<http://www.lrc.org.za>

ProBono.Org

Johannesburg and Durban

Tel: 011 339 6080 (Johannesburg Office)

www.probono.org.za

Socio-Economic Rights Institute of South Africa (SERI)

Johannesburg

Tel: 011 356 5860

<http://www.seri-sa.org>

OTHER INSTITUTIONS

Rental Housing Tribunals

Tel: 011 630 5035 (Gauteng)

0860 106 166 (Western Cape)

031 336 5300/5222 (KwaZulu-Natal)

018 387 6057 (North West)

015 294 2241 (Limpopo)

013 766 6200 (Mpumalanga)

053 830 9444 / 9544 (Northern Cape)

South African Board of Sheriffs

Tel: 021 426 0577

Email: contact@sheriffs.org.za

<http://www.sheriffs.org.za>

Independent Police Investigative Directorate (IPID)

Tel: 012 399 0000 (National)

Email: complaints@ipid.gov.za

<http://www.icd.gov.za>

South African University Law Clinics Association (SAULCA)

National

Tel: 018 297 5341

<http://www.saulca.co.za>

National Alliance for the Development of Community Advice Offices (NADCAO)

National

Tel: 011 339 1258

<http://nadcao.org.za>

LEGISLATION

Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act 19 of 1998

http://www.saflii.org/za/legis/consol_act/poiefauoola1998627/

Rental Housing Act 50 of 1999

http://www.saflii.org/za/legis/num_act/rha1999171.pdf

Extension of Security of Tenure Act 62 of 1997

http://www.saflii.org/za/legis/consol_act/eosota1997364/

OTHER GUIDES

Evictions and Alternative Accommodation in South Africa: An Analysis of the Jurisprudence and Implications for Local Government

By Socio-Economic Rights Institute of South Africa (SERI), 2013.

http://www.seri-sa.org/images/Evictions_Jurisprudence_Nov13.pdf

Chapter 10: Land and Housing

By Paralegal Advice

<http://www.paralegaladvice.org.za/docs/chap10/06.html>

Holding Your Ground: Resisting Evictions in South Africa

By Centre on Housing Rights and Evictions (COHRE), 2010.

http://abahlali.org/files/Holding_Your_Ground.pdf

Rental Housing in South Africa: Legislation, Regulations and Case Law

By Socio-Economic Rights Institute of South Africa (SERI), 2013.

<http://seri-sa.org/images/SERI%20Rental%20Housing%20FINAL%20TO%20PRINT%20lo%20res.pdf>

A Tenant's Guide to Rental Housing

By Socio-Economic Rights Institute of South Africa (SERI) and Centre for Urbanism and Built Environment Studies (CUBES), 2013.

<http://www.seri-sa.org/images/SERI%20Tenants%20FINAL%20TO%20PRINTlo%20res.pdf>

Engaging meaningfully with government in the realisation of socio-economic rights in South Africa: A focus on the right to housing

By Community Law Centre (CLC) and Socio-Economic Rights Institute of South Africa (SERI), 2010.

http://seri-sa.org/images/Meaningful_engagement.pdf

A Guide to Tenure Security Rights on Farms

By Lawyers for Human Rights (LHR)

<http://www.lhr.org.za/sites/lhr.org.za/files/Esta%20Manual%20SecTen-English.pdf>



NOTICE OF MOTION

IN THE HIGH COURT OF SOUTH AFRICA
(SOUTH GAUTENG, JOHANNESBURG DIVISION)

Case Number: 50423/14

In the matter between:

BRICK PROPERTIES

and

Applicant

OCCUPIERS OF TUDOR MANSIONS, 24 HILLBROW STREET, BEREA

Respondents

NOTICE OF MOTION

TAKE NOTICE that the Applicant intends to make an application to the above Court for an order in the following terms:

1. That the Respondents and all those persons holding occupation through them at **24 HILLBROW STREET, BEREA** (hereinafter referred to as "the property") vacate the property as contemplated by Section 4(1) of the Act 19 of 1998.

TAKE NOTICE THAT the grounds for the eviction are more fully set out in the Forwinding Affidavit deposed by **JOHN CRONJE**.

TAKE FURTHER NOTICE that the Applicant has appointed **LAW PARTNERS, 26 Fricker Road, Illovo** at the address set hereunder, as its attorney of record at which it accepts notice and service of all process in these proceedings.

KINDLY TAKE NOTICE FURTHER that if you intend opposing this application you are required: (a) to notify Applicant's attorney in writing within 5 days of service hereof, (b) and within fifteen days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; (c) and further that you are required to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the **21st day of November 2011** at 10h00 or such date thereafter as will be notified to the Respondents in terms of the Notice in terms of Section 4(2) to be served upon the Respondents.

DATED at ILLOVO on this 25th day of September 2011.

LAW PARTNERS
Applicant's Attorney
26 Fricker Road, Illovo
Ref: Law/pcm/TRO45

To: **THE REGISTRAR OF THE ABOVE HONORABLE COURT**

To: **OCCUPIERS OF TUDOR MANSIONS
RESPONDENTS
24 HILLBROW STREET, BEREA**



NOTICE OF INTENTION TO OPPOSE

**IN THE MAGISTRATE'S COURT FOR THE MAGISTERIAL DISTRICT OF
JOHANNESBURG
(HELD AT JOHANNESBURG)**

CASE NO: 280/15

In the matter between:

ANGLO AMERICAN CORPORATION LTD

Applicant

and

SIPHO ZULU

First Respondent

ALL UNLAWFUL OCCUPIERS OF

ERF 123 MAIN STREET, JOHANNESBURG

Second Respondent

CITY OF JOHANNESBURG

METROPOLITAN MUNICIPALITY

Third Respondent

NOTICE OF INTENTION TO OPPOSE

PLEASE TAKE NOTICE that the First and Second Respondents hereby give notice of their intention to oppose the above application.

PLEASE TAKE FURTHER NOTICE that the First and Second Respondents appoint the **SERI LAW CLINIC** as their attorneys of record and will accept service of all documents and process in this matter at the address set out below.

DATED AT JOHANNESBURG ON THIS 5 DAY OF MARCH 2015.

SERI LAW CLINIC

First and Second Respondents' Attorneys
6th Floor, Aspern House

54 De Korte Street

BRAAMFONTEIN, 2001

Tel: 011 356 5860

Fax: 011 339 5950

Ref: Ms B. Ramji/mb/Mahlangu

**TO: CLERK OF THE ABOVE HONOURABLE COURT,
JOHANNESBURG**

AND TO: TOM, DICK AND HARRY INC

Attorneys for the Applicant

1 Market Avenue

JOHANNESBURG

Tel: 011 228 3694

Fax: 011 228 3600

Email: dick@tdh.co.za

Ref: Mr Dick/CIV/4421

AND TO: CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Legal and Compliance Department

3RD Floor, Metro Centre

158 Loveday Street

BRAAMFONTEIN



6th floor Aspern House
54 De Korte Street
Braamfontein 2001
Johannesburg
South Africa

Reception: +27 11 356 5860
Fax: +27 11 339 5950
Email: dennis@seri-sa.org

