

ILLEGAL LAND OCCUPATION

HOW TO DEAL WITH ILLEGAL OCCUPATION OF LAND

ILLEGAL LAND OCCUPATION

- The purpose of the documents is to make a clear distinction between:
 - Unlawful access to property and “squatting,
 - A sudden and orchestrated invasion of property by people on the other hand.
 - And how to handle land invasions

Unlawful occupation

- 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 a not merely a trespasser but unlawful occupier, as contemplated in the Prevention of Illegal Eviction and the Unlawful Occupation of Land Act of 1998 (PIE)

Legislation relation to land occupation and evictions

- The eviction of persons is regulated by law
- The following legislation regulates different situations
- The Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) ESTA
- The Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996)
- The Trespass Act, 1959 (Act No. 6 of 1959)
- Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998) PIE

PIE, 1998 (Act No. 19 of 1998)

- The Act came into effect on 5 June 1998 and repealed the Prevention of Illegal Squatting Act
- **In short, the Prevention of Illegal Eviction from Unlawful Occupation of Land Act (PIE) is described as legislation that aims to protect both the tenant's and the landlord's interests and rights simultaneously. This legislation prohibits not only unlawful eviction, but also allows for legitimate expulsion of unlawful tenants.**
- Squatting is no longer a criminal offence.
- Landowners can no longer be able to make use of common law remedies.
- Unlawful occupiers may by now only be removed by means of a court order issued in terms of this Act.

PIE, 1998 (Act No. 19 of 1998)

- **Where is the Act applicable?**

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

- **What is the aim of PIE?**

To provide for the prohibition of unlawful eviction; to provide for procedures for the eviction of unlawful occupiers; and to repeal the Prevention of Illegal Squatting Act, 1951, and other obsolete laws; and to provide for matters incidental thereto”

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

The Act protects the unlawful occupiers or the person in charge of land.

PIE, 1998 (Act No. 19 of 1998)

- S4 of the Act requires that a landowner seeking to evict an unlawful occupier from his land must prove:
- that the person occupying the land does so unlawfully
- That the procedural provision of PIE have been complied with, and
- That on consideration of all relevant circumstances an eviction order is just and equitable. **(Wormald No & others v Kambule 2006(3) SA 562 (SCA))**

Protection of unlawful occupier

- The Act stipulates that unlawful occupiers may only be evicted in terms of the provisions of this legislation
- Section 4(2) provides that an owner who plans to evict unlawful occupiers is required to give them at least two week's 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.
- After two- weeks period, the owner 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.

Protection of unlawful occupier

- If an unlawful occupier has occupied the land 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. **(elderly, children, disabled persons and household headed by women**

Protection of unlawful occupier

- If an unlawful occupier has occupied the land for more than six months at the time 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, 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, disables persons and household headed by women.

Urgent application

- 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.

Urgent application

- However, if people are in the process of occupying land and/or houses but have not settled, or are pegging out land and the municipality is unable to control the unlawful land invasion, an urgent interdict should immediately be sought to stop the invasion process. Any person occupying the relevant land and/or houses or erecting structures, after the granting of the interdict, will be in contempt of court.

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) or a farm worker.
- Eviction of an occupier must take place in terms of the relevant legislation otherwise the eviction would be illegal

Eviction from land

- Unlawful occupiers can only be evicted if an eviction order is issued by the Magistrate's Court or High Court
- The court order will have a date by which the unlawful occupier must vacate the said property and he/she fails to do so, the sheriff will be authorised to remove him/her from the premises.

Available options for the eviction of unlawful occupants ?

- A landowner (including the local authority), may bring an urgent application in terms of section 5 of PIE (if a proper case for urgency can be made out) or in the normal course, in terms of section 4 of PIE may be brought.
- If PIE is not applicable, summons may be issued, stating that the plaintiff is the landowner and that the defendant is in unlawful occupation, having breached the contract or the consent for occupation has been withdrawn.

Available options for the eviction of unlawful occupants

- If the local authority is not the landowner but, is the person in charge of the land, the local authority may bring an action in terms of sections 4 or 5 of PIE, if applicable.
- The local authority may give notice to a private owner to bring an action in terms of section 6 of PIE for eviction if it is in the public interest to bring an application and the relevant landowner refuses to do so.

Eviction from land

- S4(10) provides that the court which orders the eviction of any person may make an order for the demolition and removal of the building or structures that were occupied by such person on the land in question.
- S4(11) further provides that 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 the sheriff must at all times be present during the demolition or removal.

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.

- **What the owner can do?**

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

SAPS' responsibility

- Must investigate to ascertain whether any of the following offences had been committed:
- Common law offences: assault, murder, etc
- Trespassing- Section 1(1) of the Trespassing Act
- Payment for orchestrating unlawful occupation- section 3 of PIE
- Police, as custodian of the law, must prevent life and property of the inhabitants of the land. POP will be send out to attend to the situation.

SAPS' responsibility

- National Instruction 4/2014, Standing Order (G) 262 deals with Crowd Management during gatherings and demonstrations.
- Police maintain public order
- Regulate the crowd management environment and if violence is anticipated or has occurred during gatherings/ demonstration, the restoration of public order.

SAPS' responsibility

- The SAPS in partnership with the community, metropolitan police services and other agencies devise effective methods to promote public safety as well as reassuring the community that they are protected.
- To ensure this, the Service must play a pro-active role in attempting to identify and diffuse any possible conflict before it escalates to violence.
- This is done by communicating with the public, organisers and participants.

SPECIFICATION IN THE EVENT OF LAND INVASIONS

- Any action that is indicative of unlawful occupation of the land must be reported by the land owner or his authorised representative to the local police and a complaint of trespassing must be lodged in terms of section 1 of the Trespass Act.
- If the land owner has any information or has received threats which are indicative of a land invasion, this must be reported to the local police.

SPECIFICATION IN THE EVENT OF LAND INVASIONS

- 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 PIE and the incident must also be reported to the nearest police station.

Conclusion

- The best approach is to restrain possible unlawful occupants from gaining possession of land. Although it is very difficult to realise in practice, peaceful, non-violent methods (e.g. negotiations) should be employed to prohibit occupation.
- Other precautionary measures could include fencing off the property and posting guards to prevent unlawful occupation from happening. The landowner and Local Authority can also try to contain the invasion by peaceful methods.

Conclusion

- Furthermore, the employment of rapid response units that can demolish structures in the process of being erected and asking people to move when they are in the process of occupying, would also prevent the consequences of a land invasion.
- Urgent interdicts would have a similar effect, either to stop the land invasion or to quell the flow thereof.

Conclusion

- As soon as possession has been taken of a site by the erection of structures, occupants of structures cannot be removed without implementing the provisions of PIE.
- The landowner and Local Authority must therefore act as quickly as possible the moment they are informed of the occupation.
- A twofold approach is proposed namely : -
 - Lodging an application for an eviction order under PIE;
 - and simultaneously embarking on peaceful negotiations with the occupants.

Conclusion

- It is vital that the information is obtained as soon as possible in order to expedite the actions and procedures. This will ensure that the question of alternative accommodation does not arise if the proceedings are instituted before the six months occupation time period.
- A properly kept record will also set out all the relevant circumstances for the court. These should be conveyed to the attorney as a matter of urgency as any delay in obtaining these details will frustrate the granting of an interdict or eviction application and further complicate the situation

Thank you