

A guide to

TENURE SECURITY RIGHTS ON FARMS



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Lawyers for Human Rights
SECURITY OF FARM WORKERS PROJECT

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Tenure rights on farms

Lawyers for Human Rights–Security of Farm Workers Project have contact every day with farm workers. Through this, we have found that there is a misconception by occupiers that the *Extension of Security of Tenure Act 62 of 1997* (ESTA) grants occupiers ownership rights to their residences which they occupy on farms.

A farm worker **does not receive ownership** of a house that has been allocated to him on a farm. In the past, prior to November 1997, farm workers had no protection regulating their rights of residence on a farm. As a result, farm workers were unfairly evicted without any court processes being followed by a land owner.

Therefore ESTA was promulgated in November 1997 to regulate the:

- conditions of residence on certain land, such as farms
- conditions and circumstances under which the right of persons to reside on land is terminated
- legal process which has to be followed by the land owner, before a farm worker may be evicted.

Note: ESTA provides that no farm worker may be evicted from a farm without a court order.



Who is protected by ESTA?

A person who has received permission from a land owner, and/or person in charge, to reside in a dwelling on a farm is protected in terms of ESTA. Permission can be given verbally (eg. where the owner has told a farm worker that he/she can reside in a particular house on the farm) or it can be in writing

(eg. in the form of a lease agreement or as part of the employment contract). In terms of ESTA, people that earn more than R5 000,00 per month are not protected by the Act. Upon receiving consent to reside on a farm, the farm worker can be described as an *occupier*, as referred to in ESTA.

Note: Only the person who has received permission to reside in a dwelling on the farm, is protected by ESTA. For example:



X and Y are married and have four children. If X alone approaches the land owner for residence and employment and it is granted, then only X will be protected by ESTA. In this case, Y and the children will reside on the farm through X's right to have his family reside with him. Therefore Y and the children do not have rights of their own to live on the farm.

Can a husband and wife each have independent rights of residence?

If, for example, X and Y approach a land owner as a couple "either married or living together as partners", seeking residence, and the land owner grants this to both of them, then both X and Y can be regarded as having independent rights of residence. In this scenario both X and Y are protected by ESTA. It means that all the requirements of ESTA must be complied with in respect of *each* X and Y.

Note: It is important to keep records of dates and have witnesses whenever any act and/or commitment is made by a land owner.



Who may not be evicted?

A long term occupier is someone who has resided on a farm for more than 10 years *and* is over 60 years of age *or* who cannot provide labour to a land owner as a result of ill health, disability or injury. Long term occupiers' rights of residence may not be terminated *unless* they have:

- intentionally and unlawfully harmed any other person occupying the land
- intentionally damaged property of a farmer
- engaged in behaviour which threatens others occupying the land
- assisted other unauthorised people to establish new dwellings on the farm
- breached a condition or term of their residence with which they are able to comply, but have not done so despite being given one month's notice to comply. For example: when an occupier allows unauthorised people to reside with them
- committed such a fundamental breach of the relationship between the farmer and themselves that it is not possible to restore this relationship. For example: if the farm worker assaults the farmer.

Fundamental rights of occupiers & land owners

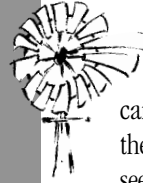
Both farm workers and land owners have protection of the rights in our Constitution, including:

- The right to human dignity
- The right to freedom and security of person
- The right to privacy
- The right to freedom of religion, belief and opinion and of expression
- The right to freedom of association
- The right to freedom of movement.

Farm workers' rights of access to services

A farm worker has the right of access to basic services, such as electricity, water and sanitation, if this was agreed on with the owner or person in charge when they arrived on the farm. So, if a farm worker received express and/or tacit consent to reside on a farm in a house that had electricity and afterwards the farmer disconnects the electricity, then this is regarded as an unlawful act and the farm worker can seek for the service to be restored, either through mediation with the farmer and/or through obtaining a court order.

Note: Denying access to water to a farm worker is unlawful in terms of ESTA, amounting to an eviction. Criminal charges in terms of ESTA can be laid against the farmer, as well as seeking a civil remedy by a court order for the restoration of water to the household.



General rights available to farm workers

- Farm workers/occupiers have the *right to receive visitors*, subject to reasonable conditions imposed by the farmer, such as times of visits, gates through which visitors may enter. *Note:* the conditions imposed by farmers must be reasonable. ESTA stipulates that the farm worker can be held liable for any damages caused by their visitors, if it can be found that the farm worker could have taken reasonable steps to prevent such damage occurring.
- Farm workers have the *right to receive postal* or other communication.
- Farm workers have the *right to family life*. For example, if X is an occupier, then he will be entitled to have his wife and children reside with him. ESTA further amplifies this right with "...the right to family life in accordance with the culture of that family...".

In essence, this *may* include parents of the occupier, his/her spouse and other extended family members, such as daughter-in-laws and grandchildren. The important criteria here is that these family members are dependent upon the occupier, or *vice versa*, and a court can be convinced that it is in "...accordance with the culture of that family..." that these family members are residing with the occupier. Each case is determined individually.

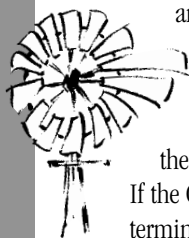
- Farm Workers have the right not to be denied *access to educational or health services*.

Eviction procedure

Landowner must terminate the right of residence of the occupier

Before an eviction, the land owner must first terminate the right of residence of the occupier. The termination may take the form of a written notice addressed to the occupier, informing him/her to vacate the residence. The notice must also inform the occupier by which date he/she must vacate the residence.

Note: It is important to understand the underlying basis on which the occupier received residence before a termination notice or letter is given – for instance, the employment and/or lease agreement must have ended. If employment was the basis upon which an occupier started residing on a farm, then the occupier must have been dismissed fairly, in accordance with the *Labour Relations Act*. If an occupier feels that he was unfairly dismissed, then he/she has 30 days from the date of his/her dismissal to refer his/her complaint to the *Commission for Conciliation Mediation and Arbitration* (CCMA). If the CCMA resolves that the occupier was fairly dismissed, then any termination letter given to the occupier can take effect.



The provision/term on which the land owner relies in terminating the right of residence of the occupier must be fair. For example, if X has signed a lease agreement, in addition to signing an employment agreement, and if X's employment has been fairly terminated, it does not necessarily mean that there is a basis for the land owner to terminate X's right of residence, because the basis of his right of residence may be the lease agreement which is still operable.

Eviction of an occupier

ESTA provides for different requirements in respect of an occupier who had become one before 4 February 1997 and one who became an occupier after that date.



Eviction of an occupier who became an occupier before 4 February 1997

In the case of a person who became an occupier before 4 February 1997, the court may grant an eviction order against the occupier if he/she has:

- intentionally and unlawfully harmed any other person occupying the land
- intentionally damaged the property of a farmer
- engaged in behaviour which threatens others occupying the land
- assisted other unauthorised persons to establish new dwellings on the farm

and if these breaches have not been remedied by the occupier.

A court may also grant an order to evict an occupier if the:

- land owner has complied with all the terms of an agreement but the occupier has not, despite being given one calendar month written notice to remedy his/her breach, eg: if the occupier agreed not to sell alcohol from the residence and then sells alcohol in breach of this agreement.
- occupier physically assaults the land owner, as this could make it impossible to restore the relationship between the occupier and land owner.
- occupier is or was an employee of the land owner and voluntarily resigns from his/her employment, then this may also be a basis for eviction. *Note:* Occupiers should seek legal assistance before deciding to resign.

If none of the circumstances above apply, the court may order an eviction of the occupier, if the court is satisfied that suitable alternative accommodation is available to the occupier. Before, making this decision, the court must ascertain:

- that the occupier has found suitable alternative accommodation within nine months of the termination of the right of residence
- who provided the residence to the occupier
- whether the business of the land owner would be seriously prejudiced if the residence is not available to other employed people.

The court must also consider whether it is just and equitable to grant an eviction order, taking into account the efforts that the occupier and land owner have made to secure suitable alternative accommodation and, *importantly*, the interests of the respective parties, including the comparative hardship that the occupier or landowner may suffer if an eviction is or is not granted.

Eviction of an occupier who became an occupier after 4 February 1997

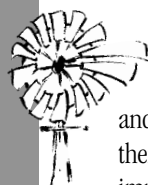
The Court may grant an eviction order against people who became occupiers after 4 February 1997, if it is just and equitable to do so. In determining this, the Court must look at:

- how long the occupier resided on the farm
- whether the agreement is fair on which the land owner relies in evicting the occupier

For example, X and Y are married and both received express consent to reside on the farm, so both became independent occupiers. If the land owner seeks the eviction of X and Y based only upon an agreement concluded with X, then the couple can claim that their eviction is not fair, as it disregards Y's independent status as an occupier

- whether there is suitable alternative accommodation available to the occupier

Note: Farm workers/occupiers facing the likelihood of an eviction, should make application for housing at their relevant municipalities and *keep proof* of their application. It is important to *keep records* of the efforts the occupier has made to seek suitable alternative accommodation.— for example, keep a note of the dates of when he/she searched for alternative accommodation, and the person to whom she/he made enquiries.

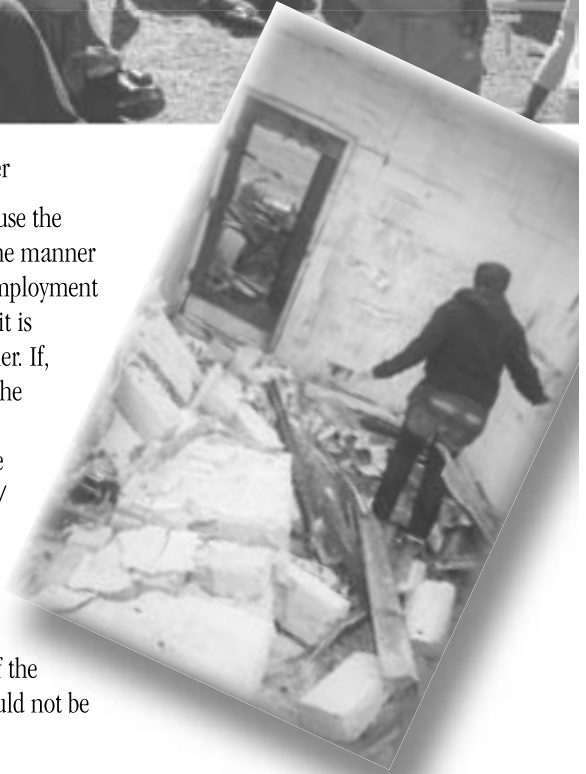




- the reason for the eviction of the occupier

If the reason for seeking eviction is because the occupier's employment has ended, but the manner in which the employer terminated the employment is not fair, then the court may state that it is not just and equitable to evict the occupier. If, for example, the land owner conducted the disciplinary enquiry which charged the employee with being under the influence of alcohol in the course and scope of his/her duties, and the disciplinary enquiry was held while the employee was under the influence of alcohol, then it can be alleged that the occupier would not have understood the nature of the enquiry and, in this circumstance, it would not be fair to seek his/her eviction

- the balance of the interests of the occupier, the land owner and the remaining occupiers, by the effect of the court's order.



Notices to the occupier, municipality and the Department of Land Affairs

In terms of ESTA, the land owner seeking the eviction of the occupier must provide the occupier, relevant municipality and the Department of Land Affairs *two months notice* of his/her intention of seeking the eviction of the occupier. This notice must be in a prescribed form and can be served by the sheriff, registered post or by a representative of the land owner.

FORM E

NOTICE TO OCCUPIER OF INTENTION TO APPLY FOR EVICTION ORDER

NOTICE IN TERMS OF SECTION 9(2)(d)(i) OF THE EXTENSION OF SECURITY OF TENURE ACT, 1997

Note: a separate notice must be served on every occupier in the household, excluding children under the age of 18. Children under the age of 18 can be cited in a notice served on an adult member of the household in which they are ordinarily resident.

To:

WYNAND FIELIES

Children under the age of 18:

1. **RICARDO FIELIES**

And to:

KATHRINA FIELIES

2. **RAYMOND FIELIES**

BUSHBUCK FARM

WELLINGTON

Fill in the name and address of the occupier.

Use more space if necessary.

Note to sheriff serving this notice: You must read out the highlighted part in an official language which the occupier understands. If you yourself are not fluent in that language, you must use an interpreter. A copy of this notice must then be given to the occupier in that language, and in another official language. If possible the copy given to the occupier should be signed and dated by him or her and returned to the owner or person in charge as proof of service.

This is an important notice. It is being given to you in terms of the Extension of Security of Tenure Act 62 of 1997.

This notice means that the owner or person in charge plans going to court in two month's time or at some time thereafter to ask an eviction order be issued against you. The owner or person in charge must ensure that you are told when and where the case will be heard. The grounds on which the eviction order will be sought are as follows:

Your right of residence stemmed from your employment contract which was lawfully terminated and therefore your right of residence

Give a summary of all the grounds on which the eviction order will be sought. Additional pages may be attached if necessary.

**The land to which this notice relates is commonly known as:
BUSHBUCK FARM, WELLINGTON, in the District of WELLINGTON**

Give a full description of the land as it is commonly known, including residential and grazing land, and any land which is being used for cultivation.

The land is officially described as:

PORTION 3 of the FARM NUMBER 452, in the Division of DRAKENSTEIN

Give the full Deeds Office description (if any) of the land on which the occupier is residing. In the case of a farm, this must include the portion, name and number of the farm, and the name of the district in which the farm is situated.

The summary contained in this notice of your legal position is incomplete. For further information you should immediately contact a lawyer, a non-governmental organisation or the Department of Land affairs.

Signed at on this the day of 20.....
Fill in the name of the district or closest town or city and today's date.

*Sign here and state whether acting as owner or person in charge.
If person in charge, state in what capacity he or she is acting.*

Full name of owner or person in charge of the land:

JOHAN SNUMAN

Contact tel. no.: **(021) 873 9243**

Contact address: **P.O. Box 143, WELLINGTON 7654**

Received by me at
on this the day of 20..... at

Fill in the name of the district or closest town or city, today's date and the time when the notice was received.

.....
It is advisable for the occupier or other person receiving the notice to sign here.

I certify that this notice was served at.....
on this the day of 20..... at

Fill in name of district or closest town or city, today's date and the time when the notice was served.

.....
Signature and stamp of sheriff saving this notice.

Full name of sheriff serving this notice:.....

Designation: Contact tel./fax no.:

Contact address:.....

.....
.....
.....

EXAMPLE ONLY

More information

This is an important notice. It is being given to you in terms of the Extension of Security of Tenure Act, which was passed by Parliament in 1997. The Act gives you the right to live on the land where you were staying on 4 February 1997, or at any time thereafter, provided you had the permission of the owner or person in charge. It also gives you the right to carry on using any other land which the owner or person in charge gave you permission to use on or after that date.

The Act makes it possible, in certain circumstances, for these rights to be brought to an end. The owner or person in charge must act fairly, and follow the procedures set out in the Act. The first step that the owner or person in charge must take is to end your right of residence after which you must be given this notice. This notice means that the owner or person in charge of the land plans going to court in two months' time or sometime thereafter to ask that an eviction order be issued against you. The court hearing the matter will be either the magistrate's court in your area, or the Land Claims Court in Randburg (Gauteng) or, if you agree, the provincial division of the High Court responsible for the area in which you are staying. The owner or person in charge must ensure that you are told when and where the case will be heard.

Application seeking the eviction of an Occupier

The land owner can serve a Notice of Motion, instead of the notice mentioned above, *two months* before the date of the hearing.

This Notice of Motion or application means that the land owner has enrolled the matter at the relevant court, applying for the eviction of the occupier. It is served on an occupier and/or other relevant parties. This notice must be taken *immediately* to a legal service provider, as there are certain procedural timeframes that the attorney representing the occupier has to adhere to when responding to the land owner's attorney.

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF WELLINGTON HELD AT WELLINGTON

CASE NO.:

In the matter between:

BUSHBUCK FARM

Applicant

And

WYNAND FIELIES

1ST Respondent

KATHRINA FIELIES

2ND Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the Applicant herein intends applying to the above Honourable Court on the **31ST OCTOBER 2006**, at **09h00** or as soon thereafter as the Applicant's attorney can be heard, for an order in the following terms:

1. That the 1ST and 2ND Respondents be ordered to vacate the farm, commonly known as **BUSHBUCK FARM**, on a date to be determined by this Honourable Court;
2. That, should the Respondents fail to vacate the farm on a date specified by this Honourable Court, the Sheriff of this Honourable Court be authorised to execute an eviction order against the Respondents on a date to be determined by this Honourable Court;
3. That a copy of the eviction order be served on the Respondents personally by the aforementioned Sheriff;
4. Further and/or alternative relief; and
5. Costs of this Application.

TAKE FURTHER NOTICE THAT the Affidavit of **JOHAN SNUYMAN** attached hereto, will be used in support of this Application.

TAKE FURTHER NOTICE THAT the Applicant appoints the offices of **MARNIE & VENTER ATTORNEYS, 395 Church Street, Wellington**, as the address where service of processes will be received in this matter.

AND TAKE NOTICE THAT should the Respondents intend opposing this Application, they are required to:

- (a) Inform the Applicant's attorneys in writing of their intention to do so within 5 days of service of this Notice of Motion by the Sheriff of this Honourable Court;
- (b) To file their Answering Affidavits within 15 days of service of their Notice of Intention to Oppose, at the address of the attorneys of record of the Applicant indicated as the address where service of process will be received;
- (c) Appoint an address within 8 (eight) kilometers from this Honourable Court where the Respondents will receive service of process in these proceedings.

DATED AT WELLINGTON ON THIS 4TH DAY OF AUGUST 2006.

MARNIE & VENTER ATTORNEYS
Attorneys for the Applicant

Per:

H. C. MARNIE

395 Church Street

Wellington

P. O. Box 1441, Wellington

Tel.: (021) 873-4435

Fascimile : (021) 873-9548

(Our Ref. : Mnr. Marnie / Bushbuck Farm/ B109)

TO : THE CLERK OF THE CIVIL COURT
Magistrates Court, WELLINGTON

AND TO : WYNAND FIELIES Per Sheriff
First Respondent
Bushbuck Farm, WELLINGTON

AND TO : KATHRINA FIELIES Per Sheriff
Second Respondent
Bushbuck Farm, WELLINGTON

AND TO : DRAKENSTEIN MUNICIPALITY Per Registered Post
P. O. Box 18
WELLINGTON 7654

AND TO : THE DEPARTMENT OF LAND AFFAIRS Per Registered Post
3rd Floor Nedbank Centre
Strand Street 63, CAPE TOWN 8001

What is an occupier entitled to when a court makes an order for his/her eviction?

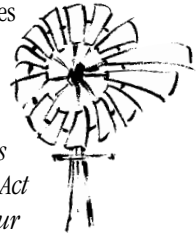
In making an order for the eviction of an occupier, the court may order that the land owner pays the occupier compensation for any structures and/or improvements that the occupier made to the residence. The occupier can also be compensated for any crops planted.

The court may also order that the land owner pays the occupier any outstanding wages and/or monies that are due in terms of the *Basic Conditions of Employment Act* and/or the *Labour Relations Act*. For example, the occupier must be paid out for remaining leave due, monies due in terms of severance packages.

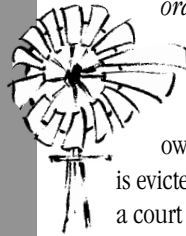
No occupier maybe evicted without a court order

By law no farm worker/occupier maybe evicted without a court order. Such cases should be reported immediately to the closest *South African Police Services* (SAPS) station. If the SAPS refuse to assist an occupier, then he/she should demand to see the Station Commissioner of that particular police station. If an occupier, evicted without a court order, wants to move back onto the farm and the land owner refuses to allow this, then the occupier should contact a legal service provider, that may be able to assist him/her to seek restoration of his/her residence on the farm.

Note: No person may be evicted before any outstanding wages and/or monies that are due in terms of the *Basic Conditions of Employment Act* and/or the *Labour Relations Act* have been paid.



Note: It is a *criminal offence to evict an occupier without a court order* and an occupier can lay a criminal charge against the land owner if he/she is evicted without a court order.



What happens when a farm is sold?

When a farm is sold, the rights of occupiers do not change – the rights the old land owner had given to the occupier will pass on to the new land owner.

Probation officer's report

In terms of ESTA, the court hearing an eviction application must request the local district office of the *Department of Land Affairs* to compile a report. The issues that this report must look at are:

- the availability of suitable alternative accommodation for the occupier
- how an eviction will affect the constitutional rights of affected persons, such as the rights of children to education, rights to secure tenure, right to adequate housing
- hardships that an occupier may suffer as a result of an eviction.

The officer from the relevant *Department of Land Affairs* office will therefore visit the residence of the occupier to obtain all this information. This report is important and can determine the decision the court can make to evict or not to order the eviction.