

13 August 2021

Extension of Security of Tenure Act and Amendment in 2018: a summary

The Extension of Security of Tenure Act 62 of 1997 or 'ESTA' promotes the protection of the rights of persons residing on property that is not owned by them. The Extension of Security of Tenure Act is only applicable to land that is not part of a township, i.e. agricultural land. The properties targeted by this piece of legislation are rural and peri-urban land. ESTA deals with the eviction of occupiers of the above-mentioned land. Some persons may not be evicted from the said properties at all. They are defined as 'long term occupiers'. These occupiers include the following:

1. People resident on the property for more than 10 years
2. People over the age of 60
3. People who cannot provide labour to the land owner as a result of ill health

These long term occupiers may only be evicted if they:

- (a) intentionally and unlawfully harmed any other person occupying the land;
- (b) intentionally damaged property of the farm;
- (c) engaged in behaviour which threatened others who occupy the land;
- (d) assisted other unauthorised people to establish new dwellings on the farm;
- (e) breached a condition or term of their residence with which they are able to comply, but have failed to do so despite being given one month's notice to comply;
- (f) committed such a fundamental breach of the relationship between the parties that restoration is impossible.

Eviction may only be granted by court order or mutual agreement after two months' notice was given to the occupier following the termination or prescription of the legal rights of the occupier to reside on the property.

The 2018 amendment of the act provides for the following further protection of occupiers:

1. Further regulates the rights of occupiers
2. Provides for legal representation for occupiers
3. Further regulates the eviction of occupiers by enforcing alternative resolution mechanisms provided for in the act

For evictions of persons residing on residential property illegally, that is part of a township, the PIE act and its requirements for eviction is applicable.