



## **KNOW YOUR RIGHTS:**

### **A SIMPLIFIED GUIDE TO YOUR HOUSING & EVICTION RIGHTS**



**DO NOT EVICT**

funded by



**HEINRICH BÖLL STIFTUNG**

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## 1 Purpose of this leaflet

### What is the purpose of this leaflet?

Many women are evicted from their homes by their husbands, partners, family members or the owners of their homes. Often, women are evicted with their children and do not have anywhere else to live. They then turn to shelters for temporary assistance or live in undesirable and unhealthy living conditions.

Sometimes these women have contributed to the home financially or in other ways such as by cleaning and maintaining the home or by taking care of the children. The husband or partner is then able to go to work and earn money to pay the bond over the property or the rent.

Some women reside on land in farm, agricultural or rural areas and are evicted from their homes with their children by the owners of the land unfairly.

Women do not always know what their legal rights are to housing or their rights in terms of evictions and are evicted from their homes unfairly and illegally.

There are also circumstances where women who are in abusive marriages or relationships share a home with a husband, partner, ex-husband, ex-partner or family member who abuses them. They are not aware that they can obtain a protection order that prohibits the abuser from entering the home or a part of the home.

### How do you use this booklet?



**COMMENTS:** We use comments when a piece of information is very important or easy to misunderstand. Important information will be highlighted by this picture of a pencil.



**DEFINITIONS:** You will find definitions of legal or difficult words on the side of each page. If a word is unfamiliar to you, please read the explanation. Definitions will be highlighted by this picture of a light bulb.

## What can this booklet be used for?

- Learn about your legal rights to housing
- Learn about your legal rights in terms of evictions
- Know what to do when you are under threat of eviction or have been evicted from your home or need to obtain an order removing the person abusing you from your home.
- Assist other women that you know in learning about their legal rights to housing and their rights in terms of evictions

## 2 Housing Rights

### What are your legal rights to housing?

The Constitution **Act** 108 of 1996 (“the Constitution”) is the supreme law in South Africa. This means that it is the highest law in the country. The Constitution grants all South Africans **human rights** that must be respected, protected, promoted and fulfilled.

One of these rights is the right to housing. Section 26 of the Constitution states that

- You have the right to have access to **adequate** housing. In other words you have the right to live in a house that is satisfactory and decent. It should be healthy, have access to water and sanitation, have secure walls that do not leak etc. The state must take reasonable measures to make this right a reality, with the resources available to it for this purpose. This means that the government has a duty to provide you with a satisfactory, decent or basic home but that it is only obligated to do so if money is available for this purpose. The problem is that many South Africans need houses but the government does not have enough money allocated to housing to provide all South Africans with such houses.
- No one can **evict** you from your home without a court order. This means that a person who wants to evict you from your home can only do so with the permission of the court. Before giving the order to evict you the court must consider all the relevant circumstances. (These are discussed in more detail below)
  - ◇ No one can demolish your home without a court order. This means for example, that if the municipality wants to destroy your home they need to get permission from the court to do so. Before giving the order the court must consider all the relevant circumstances .
  - ◇ No other laws can allow somebody to evict you from your home without obtaining a court order.



#### DEFINITION

**“Act”** – legislation or set of laws on particular topic

**“Human rights”**

– privileges and entitlements as a human being. These rights are in place to protect people from being discriminated against or not treated fairly or equally to others

**“Adequate”** – sufficient, satisfactory, can fulfill basic needs

**“Evict”** – tell or make somebody vacate or leave their home

## DEFINITION



**“Shelter”** – a roof over your head” or a home

Section 28 of the Constitution also states that your child, a person under 18 years of age, has the right to **shelter**.

In order to bring into effect your constitutional right to housing and the state’s duty to provide you with housing, as described above, the Housing Act 107 of 1997 is in place. The Act recognises your constitutional right to housing and that adequate shelter is a basic human need. The purpose of the Act is to assist the state in providing housing to South Africans, to develop principles for the creation of housing and to set out the functions and duties of the state in creating housing.

## DEFINITION



**“Illegal”** – not allowed by the law

**“Illegal Eviction”** – tell somebody or make somebody leave their home when the law does not allow for the person to be evicted

**“Legal Eviction”** – tell somebody or make somebody leave their home when the law allows for the person to be evicted

**“Occupier”** – the person who lives on the property

**“Property”** – house/home/land

**The purpose PIE is to:**

- Prohibit unlawful evictions, and
- Put procedures in place for the eviction of unlawful occupiers of property.

**PIE recognises that:**

- Your home cannot be taken away from you unfairly and without a valid reason
- You cannot be evicted from your home without a court order
- You should be evicted from your home in a fair manner if you are an unlawful **occupier of property**
- The court must consider the fact that you are a woman that heads a household, that you are elderly or disabled. Your children’s needs must also be considered.

## COMMENT



**N.B.:** Please note that the court may still issue an order evicting you even if all the circumstances set out above exists. The reasons for this is explained below.

## Who is an “unlawful occupier”?

An unlawful occupier is a person who resides (lives) on property without the consent of the owner or person in charge of the property.

## COMMENT



**N.B.:** You can become an unlawful occupier if you have entered into a valid lease agreement with the owner of the property if the lease is terminated or cancelled because you failed to do what you undertook to do

in the agreement, for example, if you failed to pay rent for a few months or damaged the property seriously.

## **Who is the “person in charge” of the property?**

The person in charge of the property is the person who has the right to allow or consent to someone residing on the property.

## **Who can make an application to court to evict you from your home if you are an unlawful occupier?**

Only the owner or person in charge of the property can make an application to court to evict you from your home.



### **DEFINITION**

**“Application”** – court procedure, one form or way of putting a case before the Court

## **What procedures must be followed if the owner or person in charge of the property wants to evict you from your home?**

- The court, where the owner or person in charge of the property made the application to evict you, must give you 14 days written notice of the hearing of the eviction proceedings. Notice must also be given to the municipality in the area where the property, where you reside, is situated. The purpose of the 14 day notice period is to give you time to prepare for the hearing so that you can defend the case.
- If the court experiences problems in delivering the notice of the proceedings on you within the 14 day period, the court must ensure that you are given sufficient notice of the proceedings in all circumstances to prepare for the hearing so that you can defend the case.

## **What information must the notice of proceedings include?**

- It must state that an application has been made to evict you from the property on the basis that the owner or person in charge of the property says that you are an unlawful occupier of the property.
- It must specify the date, time and name of the court where the hearing of the proceedings will take place.

- It must explain the reason why the owner or person in charge of the property has made an application to evict you or why she or he says that you are an unlawful occupier.
- It must inform you that you have the right to defend the case when you appear at court.
- It must inform you of your right to apply for a legal aid attorney if you do not have the money to pay an attorney who will charge you fees to defend the case.

## On what grounds can you be evicted from the property?

### DEFINITION



#### “Just and Equitable”

– fair and reasonable, taking into account all the parties’ interests

#### “Sold in Execution” –

the court issues an order for the property to be sold and the proceeds of the sale to be paid to the bank with whom the owner has a mortgage bond. This will happen where the owner cannot or does not repay the bank for the bond over the property

#### “Mortgage Bond” –

monies borrowed from the bank to purchase a property. The monies owed to the bank are paid back in smaller amounts on a monthly basis

- If you have occupied the property for less than 6 months at the time that the owner or person in charge of the property makes an application to evict you, the court can make an order evicting you from the property if the court is of the opinion that it is **just and equitable** to do so. The court must however consider the fact that that you are a woman that heads a household, that you are elderly or disabled. Your children’s needs must also be considered.
- If you have occupied the property for more than 6 months at the time that the owner or person in charge of the property makes the application to evict you from the property, the court can make an order evicting you from the property if it is of the opinion that it is just and equitable to do so. The court must however take the following into consideration in making such an order:
  - ◇ Whether you have elsewhere to live or whether another property has been made available for you to occupy
  - ◇ If not, whether a state department, municipality or a non-state owner of property can reasonably make another property available for you to occupy
  - ◇ Your needs as a woman, especially if you are the head of your household, the fact that you are elderly or disabled and the rights and needs of your children.

### COMMENT



**N.B.:** It is important to note that the court does not need to make these considerations if the property was **sold in execution** because the owner of the property did not make payment of the **bond** installments over the property to the bank.

### DEFINITION



#### “Defence” – reason

- After the court has made all these considerations, and if you have not provided the court with a valid **defence** as to why you should not be evicted, the court can make an order evicting you from the property.



The court must be of the view that you are an unlawful occupier in order to grant the eviction. In other words, the owner or person in charge of the property must have **proven** that you were occupying the property without her or his consent or that you have no other right to occupy the property and you must not have provided the court with evidence proving otherwise.



#### DEFINITION

**“Prove”** – provide evidence verbally or by producing documents

**N.B.:** The owner or person in charge of the property must obtain a court order to evict you from your home. You cannot be evicted without a court order.



#### COMMENT

## What information must the eviction order contain?

- The date that you must vacate the property. This date must be just and equitable and must consider your circumstances and the period of time that you and your family have occupied the property prior to the application to evict you.
- The date that the order can be used to evict you from the property if you do not vacate the property on the date referred to above.

## Are there any circumstances that allow the owner or person in charge of the property to evict you without following the procedures set out above?

The owner or person in charge of the property can make an application to the court on an urgent basis to evict you from the property. The court’s decision on the urgent application is not final. The order amounts to a temporary order. The case must be considered by the court again to decide whether a final order of eviction should be granted.

## On what grounds will the court grant an urgent order of eviction?

- If it is likely or if a person is about to suffer serious injury or property is likely to be or is about to be damaged
- If the owner or another person is likely to suffer **hardship** if the eviction order is not granted and if the likely hardship that the owner or another person will suffer outweighs the hardship that you will suffer if you are evicted
- If there is no other option available to solve the problem at hand



#### DEFINITION

**“Hardship”** – no money to survive, no where to live

## **What procedures must be followed in order for the court to issue an urgent order of eviction against you?**

- The court must give you written notice, that must be served on you, of the owner or person in charge of the property's application to evict you from the property
- Notice must also be given to the municipality in the area where the property is situated
- The notice must include the following information:
  - ◊ That eviction proceedings have been instituted against you on the basis that you are an unlawful occupier
  - ◊ The date and time that the proceedings will be heard
  - ◊ The reasons for the application to evict you
  - ◊ That you have the right to appear before the court at the specified date and time to defend the case
  - ◊ That you have the right to apply for a legal aid attorney if you cannot afford to pay a fee earning attorneys fees

## **What should you do if the owner, person in charge or any other person threatens or continuously threatens to evict you?**

You should approach a lawyer to assist you. The lawyer should write a letter to the person threatening to evict you informing her or him that he or she should stop doing so and that she or he should make an application to evict you in court if she or he wants to evict you. The lawyer should also inform the person who wants to evict you that any application to evict you will be opposed. In certain circumstances, the lawyer can apply for an interdict stopping her or him from threatening to evict you.

## **Can a state department evict you from your home?**

A state department can evict you from your home if you are an unlawful occupier and the property is situated within the area where the state department operates for example, if your home is situated in Athlone the City of Cape Town can make an application to evict you if you are an unlawful occupier. The City of Johannesburg cannot make an application to evict you as they do not operate in Cape Town.

**N.B.:** A state department cannot make an application to evict you from your home if you are a **mortgagor** and the property is sold in execution.



#### COMMENT

#### DEFINITION

**“Mortgagor”** – the person who makes a loan from the bank to purchase a property and pays the loan back in smaller amounts on a monthly basis



#### DEFINITION

**“Public Interest”** – for the benefit of the public or in the interests of the public

## When will a court grant an order for a state department to evict you from your home?

- If the court is of the opinion that it is just and equitable to evict you from the property after considering all the circumstances that are relevant to the eviction
- If you are occupying the property on a specific piece of land without the consent of the state department and where such consent is required to occupy the property or for the building or erection of the property on that piece of land
- If the order to evict you from your home is in the **public interest** and specifically to protect the health and safety of other people occupying the land and the public generally

## What must the court consider in deciding whether it is just and equitable to grant the eviction order for the state department to evict you?

- The reasons why and circumstances under which you occupied the property on the land or erected or built the property on the land
- The period of time that you and your family have occupied the property for prior to the state department instituting the eviction proceedings
- The period of time that you and your family have occupied the property

## What procedures must the state department follow to evict you from the property?

- The state department must give the owner or person in charge of the property 14 days written notice to institute eviction proceedings against you
- If the owner or person in charge of the property does not institute eviction proceedings against you within the time period in the notice, the court can order the owner or person in charge of the property to pay the costs of the eviction proceedings

## What can you do if you are evicted from your home without a court order?

### DEFINITION



#### **“Private Prosecution”**

– institute criminal proceedings against somebody in your own name, the state does not institute proceedings against the person who evicted you

If you are evicted from your home without a court order, the person who has evicted you can be found guilty of a criminal offence and can be fined or imprisoned (for no longer than 2 years) or both if convicted. You will be required to institute a **private prosecution** against the person who evicted you.

## Who can remove you from the land if the eviction order is issued and you have not vacated the property on the date that the order said you should?

Only the sheriff of the court can remove you from the property. The court can order that a specific person must assist the sheriff in removing you from the property. If you were removed from the property by somebody who is not the sheriff or if the sheriff was not present when persons appointed by the court removed you from the property, you must report the removal to the South African Police Service (the SAPS).

## 4 Eviction and the Extension of Security of Tenure Act 62 of 1997 (“ESTA”)

### **The purpose of ESTA is to:**

- ◇ Provide long-term security of occupancy, residency or possession of land with the state’s assistance. In other words, ESTA is in place to assist you in living on the property for a long period of time or to continue living on the land for a long period of time without threat or fear of being evicted.
- ◇ Provide for and put in place the conditions that must be met and circumstances that allow for persons to be evicted from land. This means that you can only be evicted in certain situations.

### **ESTA recognises that:**

- ◇ Many South Africans do not have security of occupancy, residency or possession of land and that this can lead to them being evicted from land unfairly
- ◇ Unfair evictions cause hardship and create problems in society

- ◇ Many South Africans do not occupy property for long periods of time without fear of eviction because of **apartheid** which allowed certain groups of people to be discriminated against unfairly
- ◇ The rights of occupiers and owners of land must be considered in considering the eviction of occupiers



#### DEFINITION

**“Apartheid”** – segregation/separation/ state system that was in place in South Africa from the 1940s to 1994 that separated people and allowed for white people and black people to be treated unequally

**“Township”** – Community or town

**“Agricultural”** – farming, rural or undeveloped area

## Who does ESTA apply to?

### ESTA applies to you if you:

- occupy or reside on land in a rural area
- occupy or reside on land in a farm area
- occupy or reside on land that is undeveloped
- occupy or reside on land that is used for **agricultural** purposes
- occupy or reside on land located within a **township** that was used for agricultural purposes prior to 4 February 1997

**N.B.:** ESTA states that you can only legally occupy or reside on the land if you have the consent to occupy or reside on the land.



#### COMMENT

## How do you know whether you have the consent to occupy or reside on the land?

- You have the consent to occupy or reside on the land if the owner or person in charge of the land gave you permission to occupy or reside on the land
- You have consent to occupy or reside on the land if you occupied or resided on the land with consent prior to 4 February 1997 and continuously (without vacating the land) occupied or resided on the land after consent fell away
- Even if the owner or person in charge of the property was required to obtain additional consent from a **state** department or another authority and did not do so, you were still given consent to occupy or reside on the property if the owner or person in charge gave you such consent
- If you have occupied or resided on the land for one continuous year and have done so openly you have the consent to occupy or reside on the land if the owner or person in charge of the land is not the state or a state department
- If you have occupied or resided on the land for a continuous period of three years and have done so openly it is accepted that the owner or person in charge of the land had knowledge of your occupation or residence on the land and that she or he consented to you occupying or



#### DEFINITION

**“State”** – government

residing on the land if the owner or person in charge of the land is not the state or a state department

## When can you be evicted from the land that you occupy or reside on?

### COMMENT



**N.B.:** You can only be evicted if the owner or person in charge of the land has obtained an eviction order against you.

- You can be evicted from the land that you occupy or reside on in terms of the law if it is just and equitable to evict you in consideration of the following:

### COMMENT



**N.B.:** Certain considerations will not be made if you commenced occupation of the land after 4 February 1997. This is the date that ESTA became law

- ◇ The period of time that you have occupied the land
  - ◇ Whether the lease agreement or provisions of the law relating to your occupation of the land is fair to you
  - ◇ Your or the owner or person in charge of the land's conduct which led to the eviction proceedings or the reason for the application to evict you from the land
  - ◇ The hardship that will be suffered by you, the owner or person in charge and any other person occupying or residing on the land if you are not evicted from the land
  - ◇ Whether a reasonable expectation for the renewal of the lease exists
  - ◇ Whether a fair procedure was followed when the owner or person in charge made the decision to make an application to evict you from the land
  - ◇ You should have been given a chance to explain why you should not be evicted
- You can be evicted from the land that you occupy or reside on if you reside on the land only because such residence flows directly from your employment contract and if such contract is terminated because you have resigned or because you have been dismissed in accordance with the labour laws of South Africa

### COMMENT



**N.B.:** Please note that if you are residing on the land because your husband or partner is employed by the owner or person in charge of the land it does not mean that you have to leave the land if he resigns or is dismissed. The court order must specifically state that you are evicted from the land or the owner or person in charge must obtain a separate court order that evicts you from the land.

- You can be evicted if suitable alternative accommodation has been made available for you

## When can the owner or person in charge not evict you from the land?

- The owner or person in charge of the land cannot evict you without a court order
- You cannot be evicted from the land if:
  - ◇ you have resided on the land for 10 years or longer and you are 60 years of age OR you were employed by a previous owner or person in charge of the land and cannot work for the new owner or person in charge because you are ill, injured or disabled

**N.B.:** Please note that you can still be evicted even if your circumstances are as described above but you have:

- ◇ intentionally harmed a person occupying the land in a manner that is against the law
  - ◇ intentionally damaged the property of the owner or person in charge in a manner that is against the law
  - ◇ **threatened** or **intimidated** another person who resides on the land or on land that is situated close to the land that you reside on
  - ◇ assisted a person to create a home on the land and such person does not have the permission of the owner or person in charge to do so
  - ◇ not complied with or have breached an important provision in terms of an agreement that deals with your occupation of the land, and you could have corrected the breach after you were given 1 month's notice to do so and the owner or person in charge has complied with the terms of the agreement
  - ◇ done something that destroys your relationship with the owner or person in charge of the land such as assaulting the owner or stealing from her or him and the relationship cannot be fixed due to your conduct.
- You cannot be evicted from the land if your husband dies or if you are the child of the person who died and you reside on the land because of her or his occupation of the land without 12 months written notice to leave the land.



### COMMENT



### DEFINITION

**"Threaten"** – warn against doing something or pressurise someone to do something and if they do not do so they will be harmed  
**"Intimidate"** – bully, scare or frighten

**N.B.:** Please note that you can be evicted from the land without 12 months notice if you have:

- ◇ intentionally harmed a person occupying the land in a manner that is against the law
- ◇ intentionally damaged the property of the owner or person in charge in a manner that is against the law
- ◇ threatened or intimidated another person who resides on the land or on land that is situated close to the land that you reside on



### COMMENT

- ◇ assisted a person to create a home on the land and such person does not have the permission of the owner or person in charge to do so

## **What procedures must the owner or person in charge of the land follow to obtain an eviction order?**

- One of the grounds for eviction, discussed above, must exist
- The owner or person in charge of the land must have given you, the municipality in the area where the land is situated and the Department of Land Affairs 2 months written notice of her or his intention to obtain an eviction order or of the date of the hearing of the eviction proceedings
- You must have been given notice to vacate the land and must not have vacated the land by the date that you were requested to in the notice

## **On what grounds will the court grant an urgent order of eviction?**

The court can grant an urgent temporary order of eviction if the owner or person in charge of the land applies to the court for you to be evicted urgently. The order will however have to be made final at a later stage.

In deciding whether to grant an urgent eviction order, the court must be satisfied that:

- it is likely a person is about to suffer serious injury, or property is likely to be or is about to be damaged
- the owner or another person is likely to suffer hardship if the eviction order is not granted and the likely hardship that the owner or another person will suffer outweighs the hardship that you will suffer if you are evicted
- no other option is available to solve the problem at hand
- arrangements have been made for you to move back onto the land the temporary eviction order is not made final by the court

## **What can you do if you are evicted from your home without a court order?**

If you are evicted from your home without a court order, the person who has evicted you can be found guilty of a criminal offence and can be fined or imprisoned (for no longer than 2 years) or both if convicted. You will be



required to institute a private prosecution against the person who evicted you. The court can also issue an order stating that you can return to the land.

## **Who can remove you from the land if the eviction order is issued and you have not vacated the property on the date that the order said you should?**

Only the sheriff of the court can remove you from the land. The court can order that a specific person must assist the sheriff in removing you from the land.

## **What rights do you have in terms of ESTA?**

- You have the following constitutional and other rights in terms of your occupation of the land:
  - ◇ **The right to human dignity:**  
The right to be treated with respect as a human being.
  - ◇ **The right to freedom and security of the person:**  
The right to be free to make decisions and take opportunities in your interest and not to be abused or tortured. This also relates to you making choices about your body such as whether to have a baby or not and not to be used for a scientific experiment.
  - ◇ **The right to privacy:**  
The right not to have your home or your property searched or taken away from you and the right to not tell others or give others information that you do not want to give them.
  - ◇ **The right to freedom of religious: belief and opinion:**  
The right to follow the religion or belief system of your choice and the right to have an opinion in terms of your religion beliefs. This relates to the life that you choose to live or how you choose to live your life.
  - ◇ **The right to freedom of expression:**  
The right to express your beliefs, views or opinions with others.
  - ◇ **The right to freedom of association:**  
The right to mix with or acquaint yourself with whom you want. This includes a particular group or an association of people who for example practice the same religion or way of life that you do or who for example support to the same political party that you support.
  - ◇ **The right to freedom of movement:**  
The right to leave or live in South Africa and the right to live anywhere in South Africa where you want to live.

- You have the following other legal rights in terms of your occupation of the land:
  - ◇ You have the right to occupy or reside on the land for a long period of time without fear of being evicted
  - ◇ You have the right to have visitors but the owner or person in charge of the land may limit or disallow certain visits or visitors to protect somebody's life or any property or to prevent any work being conducted on the land from being disrupted. If any harm or damage is caused by your visitor while the visitor is on the land, you can be held responsible for the harm or damage if you could have prevented it
  - ◇ You have the right to receive post or other communications such as letters, telegrams, phone calls and so on
  - ◇ You have the right to conduct cultural family practices and to spend time with your family as your culture requires you to
- You have the right to access to water
- You have the right to access to education such as school, college or university
- You have the right to health services such as hospitals or clinics
- You have the right to visit and maintain the grave of a family member that is situated on the land

#### COMMENT



**N.B.:** Please note that all of these rights must be weighed up against the rights of the owner or person in charge of the land and that all of these rights can be limited in terms of the Constitution if the reasons for limiting these rights are reasonable and fair in terms of the Constitution.

## In terms of ESTA, what are the rights of the owner or person in charge?

**The owner or person in charge of the property has the following constitutional and other legal rights in terms of the property:**

- ◇ The right to human dignity
- ◇ The right to freedom and security of the person
- ◇ The right to privacy
- ◇ The right to freedom of religion, belief and opinion
- ◇ The right to freedom of expression
- ◇ The right to freedom of association
- ◇ The right to freedom of movement
- The right to have an animal, under the care of yourself, taken away from you in terms of the laws of South Africa if permission was not obtained from her or him for the animal to stay on the land. The owner must have given you 72 hours notice to remove the animal from the land before having the animal removed. The owner or person in charge of

the property also has the right to take steps to prevent the animal from causing damage during the 72 hours notice period.

**N.B.:** The owner or person in charge of the land may not treat you unfairly if you exercised or enforced any of your legal rights, are in the process of exercising or enforcing your legal rights or intend to exercise or enforce your legal rights.



#### COMMENT

## What are you not allowed to do on the land?

- You are not allowed to intentionally harm another person who occupies or resides on the land if causing such harm is against the law
- You are not allowed to damage the owner or person in charge's property
- You are not allowed to threaten or intimidate another person who occupies or resides on the land or occupies or resides on land close to the land that you occupy
- Permit somebody, without the permission of the owner or person in charge to set up a home on the land

## 5 Case study: Harris v Harris and the City of Cape Town Judgment ("the Harris judgment")

### What is the Harris judgment about?

Mrs. and Mr. Harris married in Muslim rites during 1984. In 1989 they applied to purchase a house from the City of Cape Town ("the City"). The application to purchase the house was only made in Mr. Harris's name and the **deed of sale** over the house was only concluded between Mr. Harris and the City. In terms of the deed of sale, Mr. Harris would make payment of the purchase price of the property by making monthly payments to the City. Mr. Harris would only become the owner of the house once most or the entire purchase price was paid to the City.

The City's housing allocation policy at the time prohibited Mrs. Harris from applying for the purchase of the property in her name or jointly with Mr. Harris on the basis that she was a woman and was considered single as she was married in Muslim Rites and the marriage was not legally recognised in South African law. Mrs. Harris was however described as his wife in the application and was required to consent, in writing, to the purchase of the property.



#### DEFINITION

**"Judgment"** – the decision or ruling handed down by a court after considering the facts of a case brought before the court and laws that apply to the case

**"Deed of sale"** – agreement or contract of sale between the person selling and the person buying. It sets out the terms on which the agreement is reached or was concluded

Mrs. and Mr. Harris moved into the house during 1989. Mr. Harris vacated the property during 1990 and Mrs. and Mr. Harris obtained a talaq (Islamic divorce) on 4 April 2002. Mrs. Harris had been living in the house from 1989.

During 2007 Mr. Harris made an application to the Wynberg Magistrates Court, Cape Town, to evict Mrs. Harris from the property. The City was also a party to the case. Mrs. Harris opposed the application. The City did not **oppose** it.

#### DEFINITION



**“Oppose”** – resist, refuse to give in to, contest

**“Allege”** – claim, not fact, not proven to be true

**“Title deed”** – formal document that the Registrar of Deeds issues stating who the owner of property is

Mr. Harris informed the court that he instituted the application to evict Mrs. Harris from the house because he wanted to move into the house.

Mr. Harris also **alleged** that he was the owner of the property and that Mrs. Harris was unlawfully occupying the house in terms of PIE. At the time that Mr. Harris instituted the application, the City was the registered owner of the property. This was proven by obtaining the **title deed** over the property from the Deeds Office that indicated that the City was the owner.

In terms of PIE only the owner of the property or the person in charge of the property can evict the occupier of the property.

The court was required to decide whether Mrs. Harris was unlawfully occupying the property and whether Mr. Harris could evict her from the property.

The court decided that Mrs. Harris was not unlawfully occupying the property as the City, the owner of the house, consented to her occupying the property by acknowledging her as Mr. Harris’s wife in the application and by accepting her consent to Mr. Harris applying for the purchase of the house. The court also ruled that Mr. Harris could not evict Mrs. Harris from the property as he was not the owner of the property and he and Mrs. Harris were both in charge of the property. This means that Mr. Harris’s application to evict Mrs. Harris from the property failed. Mrs. Harris currently still occupies the property.

## What does the Harris judgment mean for you?

- Only the owner of your home or the person in charge of the property can evict you.
- Certain legal procedures must be followed before you can be evicted from your home. In other words, and as mentioned earlier on in this booklet, you can only be evicted from your home with a court order that

the court will only grant after considering the facts of the case and the law that applies to the case.

## 6 Domestic Violence and Housing

### Can you get the court to remove your abuser from the home that you share

Yes, you can obtain a **protection order** in terms of the Domestic Violence Act 116 of 1998 (“the DVA”) that prohibits your abuser from entering the home that you share or prohibits him from entering part of the home that you share.

**N.B.:** This is NOT an eviction, but an order that the court makes to protect you from abuse



#### DEFINITION

**“Abuser”** – the person that abuses you

**“Protection order”** – a court order issued in terms of the DVA that prohibits your abuser from abusing you



#### COMMENT

### What is the DVA about?

The DVA deals with domestic violence. Its aim to provide people experiencing domestic violence with the best possible protection from domestic violence that the law can provide and to commit the state to stopping domestic violence. The majority of people who experience domestic violence are women. If you are in a same-sex marriage or relationship, you can also be abused by your wife or partner.

### What is “domestic violence” in terms of the DVA?

You are being subjected to domestic violence if your abuser subjects you to the following:

- **Physical abuse:**  
When your abuser beats, hits, slaps, punches, chokes, kicks, throws, pushes, stabs, shoots your body. Any other way in which you are physically harmed also qualifies as physical abuse.
- **Sexual abuse:**  
When your abuser forces you to have sex with him, forces you to perform oral sex on him or forcefully performs oral sex on you, forcefully touches any part of your body or forces you to touch any part of his body in a sexual way, forcefully penetrates your anus, mouth, breasts or vagina with an object or his penis etc. Many other forms of sexual abuse exist

including situations where your abuser forces you to perform sexual acts with another person or in the presence of another person.

- **Emotional abuse:**

When your abuser does things to you or says things to you intentionally to hurt your emotions or feelings so that you do what he wants you to do. For example, your abuser says that he will take your child away from you if you divorce him.

- **Psychological abuse:**

When your abuser does things or says things to you intentionally to affect you mentally in a bad way. For example, your abuser undermines you constantly and makes you feel inadequate.

- **Verbal abuse:**

When your abuser swears at you, calls you names, threatens you, shouts at you and says disrespectful things to you that are hurtful, make you feel bad about yourself or make you feel scared.

- **Economic abuse:**

When your abuser takes your money or belongings from you forcefully, refuses to give you money to buy food for your children, pay for the children's school fees or refuses to pay the rent or uses money to manipulate or control you.

- **Intimidation:**

When your abuser threatens to hurt you or do something bad to you, your children or family if you do or do not do something that he wants you to do or when he bullies you, scares you and puts you under pressure to do or not to do something. Psychological, emotional and verbal abuse can be intimidation.

- **Harassment:**

When your abuser follows you around, watches you, sends you letters, faxes, text messages or calls you or calls your friends or family for information about you and you do not want him to do so.

- **Stalking:**

When your abuser follows you around and watches you and you do not want him to do so. This is one form of harassment.

- **Damage to property:**

When your abuser breaks, destroys, spoils or dents your property such as your furniture, personal belongings and the windows of your home.

OR

- Any other abusive behaviour that harms you or can impact on your safety, health and wellbeing badly.

## What is a “domestic relationship” in terms of the DVA?

You can get an order preventing your abuser from entering your home or a part of your home if there is domestic violence and if you are in a “domestic relationship”. You are in a domestic relationship if:

- You live or lived with your abuser in an intimate relationship or marriage. Your abuser can be of the same or opposite sex.
- You share or recently shared the same residence with your abuser
- You are married to or in an intimate relationship with your abuser and you do not live with him or did not live with him in the past
- Your abuser is a family member of yours such as your father, daughter, niece, uncle etc or the family members of your current husband or partner or ex-husband or partner
- You and your abuser share responsibilities in respect of a child. You do not need to be the parents or legal guardians of the child
- Your abuser believes or thinks that he is in an intimate relationship with you

## How do you go about obtaining a protection order that prohibits your abuser from entering the home that you share or part of the home that you share?

You must approach the domestic violence clerk at the Magistrates Court that is nearest to where you reside. You must tell the domestic violence clerk that you want to obtain a protection order against your abuser to stop the abuse and if necessary that prohibits him from entering the shared home or part thereof on the basis that he abuses you.

You will need to provide the domestic violence clerk with details of the abuse. You will need to complete an application form and affidavit setting out all relevant and important information. The domestic violence clerk will help you to complete the documents. You should take other documents with you that will prove that you are being abused such as documents from the Doctor, photographs etc.

Once the documents have been completed, a **Magistrate** will look at the documents and decide whether an **interim protection** order should be issued in your favour. The Magistrate will only grant the order if she or he believes that you will be harmed or suffer if she or he does not issue the



### DEFINITION

**“Magistrate”** – an officer of the court who has the power to make decisions on matters before the court

**“Interim protection order”** – a temporary court order, not final, court must consider the matter further on a later date

order. The Magistrate has the power to order that your abuser should not enter the home that you share with your abuser or part thereof.

If the Magistrate grants the order, the order will be served on your abuser together with a notice that says when he must appear in court. The documents must be served on your abuser by the sheriff of the court or the police. The purpose of the court appearance would be for the Magistrate to decide whether the order should be made final. On the court day both you and your abuser will be asked questions by the Magistrate in order for her or him to reach a decision on whose version of the story is more likely to be true.

If the Magistrate decides in your favour the order will be made final and it will be confirmed that your abuser is prohibited from entering your home or part thereof.

#### DEFINITION



**“Warrant of Arrest”** –  
a court document that  
permits the police to  
arrest a person

If he ignores the order and enters your home or part thereof, you must return to the clerk of the court and inform her or him that he has contravened the conditions of the order and must ask for the **warrant of arrest** that is attached to the protection order to be issued by a Magistrate. You will need to explain how he contravened the order in the affidavit.

If the Magistrate is satisfied that the abuser has contravened the order, a warrant of arrest will be issued against him. You must then take the warrant to the police for them to arrest him. Your abuser will then be arrested and will need to appear in court for contravening the court order.

A protection order is only cancelled if you cancel it by providing the court with an affidavit saying that you want to cancel it. The court can however refuse to cancel it if it thinks that you need protection.

## 7 Where can you obtain assistance when you are under threat of eviction or have been evicted from your home?

You can obtain free legal advice and/or assistance from:

- **GAUTENG**  
*Department of Rural Development and Land Reform*  
*(Evictions from farms and rural areas)*  
**Pretoria (PLRO)**  
Tel: 012 310 6651/6500  
Fax: 012 328 3127



**Gauteng (PLRO)**

Tel: 012 326 3900

Fax: 012 362 4014

**Legal Aid Board**

Johannesburg

Tel: 011 877 2000

**Law Resources Centre**

Johannesburg

Tel: 011 8369831

**The Housing Tribunal**

Johannesburg

Tel: 011 630 5035

■ **KWAZULU - NATAL**

*Department of Rural Development and Land Reform  
(Evictions from farms and rural areas)*

**Pietermaritzburg**

Tel: 033 355 4300

Fax: 033 355 4379

**Newcastle**

Tel: 034 312 8460

Fax: 034 312 7337

**Vryheid**

Tel: 034 980 9469

Fax: 034 980 9454

**Port Shepstone**

Tel: 039 682 2295

Fax: 039 682 0004

**Ladysmith**

Tel: 036 638 9400

Fax: 036 638 9406

**Richard's Bay**

Tel: 035 789 1035

Fax: 035 789 1092

**Legal Aid Board**

Durban

Tel: 031 304 3290

**Law Resources Centre**

Durban

Tel: 031 301 7572

**The Housing Tribunal**

Durban

Tel: 031 336 5222

■ **EASTERN CAPE**

*Department of Rural Development and Land Reform  
(Evictions from farms and rural areas)*

**Port Elizabeth**

Tel: 041 363 7888

Fax: 041 363 8588

**East London**

Tel: 043 722 1762

Fax: 043 722 1788

■ **MPUMULANGA**

*Department of Rural Development and Land Reform  
(Evictions from farms and rural areas)*

**Piet Retief**

Tel: 017 826 4363

Fax: 017 826 4978

**Nelspruit**

Tel: 013 755 3499

Fax: 013 755 3529

**Funda Advice Office (Evictions from farm and rural areas)**

Makhazeni (Belfast)

Tel: 013 253 1998

■ **WESTERN CAPE**

**Legal Aid Board**

Cape Town

Tel: 021 426 4126

**Legal Resources Centre**

Cape Town

Tel: 021 481 3000

**The Housing Tribunal**

Cape Town

Tel: 021 483 6493

***Department of Rural Development and Land Reform  
(Evictions from farms and rural areas)***

**Beaufort West office**

Tel: 023 414 2333

**Bredasdorp office**

Tel: 021 424 1332

**Cape Town office**

Tel: 021 423 4566

**Clanwilliam office**

Tel: 021 423 4566

**George office**

Tel: 044 874 1839

**Stellenbosch office**

Tel: 021 887 7448

**Worcester office**

Tel: 023 342 0107

**Saartjie Baartman Centre for Women and Children, Athlone**

Tel: 021 801 5424/5

**Women on Farms (Evictions from farms and rural areas)**

Stellenbosch

Tel: 021 887 2960/1

**Lawyers for Human Rights (Evictions from farms and rural areas)**

**Stellenbosch :**

Tel: 021 887 1003

**Upington:**

Tel: 054 331 2200

**Western Cape Anti-Eviction Campaign**

076 186 1408/ 079 370 9614/ 078 580 8646/ 072 392 5859

**The Women's Legal Centre**

Cape Town

Tel: 021 424 5660

■ **NORTHERN CAPE**

*Department of Rural Development and Land Reform  
(Evictions from farms and rural areas)*

**Kimberley**

Tel: 053 831 4090

Fax: 053 831 4095

■ **LIMPOPO**

*Department of Rural Development and Land Reform  
(Evictions from farms and rural areas)*

Tel: 015 297 3539

Fax: 015 297 4988

■ **NORTH WEST**

*Department of Rural Development and Land Reform  
(Evictions from farms and rural areas)*

Tel: 018 462 9045

Fax: 018 462 9083

■ **FREE STATE**

*Department of Rural Development and Land Reform  
(Evictions from farms and rural areas)*

**Bloemfontein**

Tel: 051 400 4200

Fax: 051 430 2392

**Bethlehem**

Tel: 058 303 3021

Fax: 058 303 3055

**Welkom**

Tel: 057 357 1734

Fax: 057 357 1806

Notes



Lined area for notes, consisting of 25 horizontal lines.







WOMEN'S LEGAL CENTRE