WHAT DOES ESTA MEAN BY “CONSENT”? 

The Extension of Security of Tenure Act (ESTA) was created to ensure that your constitutional rights as a farm worker are protected. As farm dwellers, your right to live on a property with your family and your living conditions are tied to your or your household member’s work on the land. ESTA recognises that this makes you and your family vulnerable to evictions. ESTA specifically protects you against illegal and unpredictable evictions especially in cases of retrenchment or where you are not able to continue working as an employee.

In order for ESTA to protect you, you must fall under the definition of an occupier, which is: “A person who resides on farm land with the express or tacit consent of the owner or the person in charge of the land, or by virtue of “another right in law”. This definition does not include: anybody who is considered to be a labour tenant in terms of the Land Reform (Labour Tenants) Act of 1996 or individuals who intend to use the land for commercial, industrial or mining purposes. It also does not include people who earn more than R 13,625.00 a month.

This fact sheet will explain the ESTA definition of consent in detail.

The term “consent” refers to the permission that an owner of the land will give occupiers to stay on their property. You must have either direct or implied consent to be protected by ESTA.

There are 4 types of consent recognised by ESTA:

1. **Express Consent:** Where the occupier was explicitly told by the owner that he/she can live on the property. This can be either done verbally, or through a written agreement. (E.g. an employment or lease agreement).

2. **Tacit Consent:** Where consent to reside on the property can be “understood or implied without being stated”. (E.g. where the owner is aware of the occupiers for some time but has not objected to it).

If an occupier can show that they have been living on the property without being interrupted, harassed or hiding they may be able to show one of the following forms of consent:

3. **Presumed Consent:**
   - Occupier has been living continuously and openly for a period of 1 year.
   - It only creates an *assumption* that there is consent, it does not fully protect the occupier as the owner may challenge this in court.

4. **Deemed Consent:**
   - Occupier has been living continuously and openly for 3 years.
   - The court will assume that there was consent - even if the occupier cannot prove that he or she had consent.

---

**Can an owner take back consent whenever they want to?**

NO.

If an owner would like to withdraw consent for an occupier to stay on the property, he/she would have to make sure that it is done in a fair and reasonable manner. Two important ground rules must be followed:

1. Consent must be validly terminated before an application for eviction is brought to court. If an owner does not do this, the entire eviction application will be invalid.

2. The owner must also prove that he gave the occupiers an opportunity to explain why cancelling the consent would be unfair on them. This must happen before the owner has decided to take away consent. If this step is not followed the eviction application can be considered invalid.

In addition to these steps, ESTA also sets out three points which the court must think about in deciding whether an owner’s decision to take back consent was fair. These are:

1. What behaviour brought about the withdrawal of the consent to stay on the property?

2. What challenges will the removal of permission have on the owner? How does this compare to the challenges the occupiers and their households will face?

Did the occupiers reasonably expect that their agreement would continue
An owner can only justify taking away consent for an occupier to stay on their land for three reasons:

1. Breach of ESTA
2. Breach of contract
3. Breach of relationship

The table on page 4 explains these points in more detail.

**Breach of ESTA:** where you have broken a law specified in ESTA; or,

**Breach of contract:** where you have broken an agreement between the owner and yourself; or,

**Breach of relationship:** where your conduct has broken the relationship of trust between the owner and yourself.

**Voluntary resignation:** This is only a valid reason for eviction if you were only allowed to live on the property because of your employment and your employer did not force you to resign by making your working conditions unbearable.
This table explains the terms “Breach of ESTA, breach of contract and breach of relationship”, these are used as a basis for withdrawing consent.

<table>
<thead>
<tr>
<th>Reason to withdraw consent:</th>
<th>What does the owner need to do to prove this?</th>
<th>Situations where the owner can legally withdraw consent:</th>
<th>Situations where the owner cannot withdraw consent:</th>
</tr>
</thead>
</table>
| **Breach of ESTA**         | The owner must state that the occupier broke a specific rule in ESTA, by doing a specific thing. He cannot rely on general accusations. | A court would accept that consent has been withdrawn if an owner can show that an occupier illegally and intentionally did one of the following:  
• Harmed another person occupying the land  
• Damaged property of the owner or the person in charge  
• Conducting themselves in a way which is threatening or intimidating to others | Any other form of breach of ESTA does not justify the owner withdrawing an occupier’s consent to live on the property. |
| **Breach of Contract**     | The owner must:  
• Comply with the terms of the contract.  
• Give the occupiers 1 months' notice to fix their wrongdoing.  
• Provide evidence and explain to the court why the wrongdoing is severe enough to withdraw consent. | It would only be fair to withdraw consent for this reason if the owner can show that the occupier’s wrongdoing was so serious that it makes the entire contract (agreement) pointless. | For an owner to rely on this reason to withdraw consent he must first give the occupier a chance to fix the situation.  
Eg. If an occupier keeps a large number of cattle, the owner should first ask for the occupier to lessen the number of cattle & give the proper 1 months’ notice. |
| **Breach of relationship:**| This means that the wrongdoing destroyed the trust between an owner and occupier and cannot be reasonably expected to continue their previous relationship. | | An occupier cannot be evicted for:  
• Failing to pay rent on time.  
• Having a small and legal business on the property. |

**FOR MORE INFORMATION OR ASSISTANCE CONTACT:**

The Socio-Economic Rights Institute of South Africa (SERI)

- 6th Floor Aspenn House, 54 De Korte Street, Braamfontein 2001, Johannesburg, South Africa.
- Telephone: 011 356 5860
- Email: info@seri-sa.org
- Website: http://www.seri-sa.org