WHO IS AN “OCCUPIER” UNDER ESTA?

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.

Who is a “primary occupier” and who is a “household occupier”?

Primary Occupier: you are a primary occupier if you have been given consent to live on the land by the owner. Many farm workers are given permission to live on the land because they work on the farm. Whether or not you are a permanent employee does not affect your status as a primary occupier.

Household Occupier: you are a household occupier if your right to live on the land exists because you are a part of the primary occupier’s household. This would include a wife, husband, a spouse in a customary marriage, whether or not the marriage is registered; a child, including an adopted child, or foster care child; a grandchild; a parent, and a grandparent, who are dependants of the occupier and who reside on the land with the occupier.

ESTA gives more direct legal protection to primary occupiers. However, if you are a household occupier, you will still be protected under ESTA because primary occupiers have the right to a “family life in accordance with the culture of that family”. This means that a land owner cannot evict anyone who would be expected to live with you according to the rules and beliefs of the culture you follow.

Is there only one primary occupier per household?
NO.
Anyone who has permission or consent to live on the farm will be considered a primary occupier. There is no limit to how many primary occupiers can exist in one household.

Are occupiers always men?
NO.
Women employed as “seasonal” workers must be considered occupiers in terms of ESTA.

Does your status as an occupier change if the property is bought by a new owner?
NO.
Change in ownership does not affect your status and the legal protections you have as an occupier. Your rights as an occupier can be impacted if the property is re-zoned to be an urban area or township. ESTA does not apply to urban areas or townships.

Do my protections under ESTA depend on how long I have been living on the land?
YES.

ESTA became law on 4 February 1997. It recognises three categories of occupiers: long term occupiers; occupiers who lived on the land before 4 February 1997 (before ESTA), and occupiers who began living on the land after 4 February 1997 (after ESTA). Occupiers receive different protections depending on their category of occupation.

1. Long term occupiers: you are a long term occupier if you:
   • Are a former/current employee on the property;
   • Have lived on the land for 10 years or more; and
   • Are over the age of 60, but can no longer work due to illness, disability or injury.

2. Occupiers who were already living on the land ON 4 February 1997.

When can an owner evict an ESTA occupier?

Each category of ESTA occupier receives different protections from eviction.

If you are a long-term occupier you can only be evicted if the owner can show:
• Purposefully caused harm to other occupiers
• Purposefully and unlawfully caused damaged to the owner’s property
• Threatened or intimidated others who occupy this land or other land
• Unlawfully assisting others to build new unauthorised homes on the land

If you were already living on the land on 4 February 1997, you can only be evicted if the owner can show:
• Breach of ESTA
• Breach of contract
• Breach of relationship
• Voluntary resignation

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.
An owner can also evict you if suitable alternative accommodation has been made available to you. But, you can be evicted without alternative accommodation if the owner can show that not evicting you will seriously disadvantage his/her business or operation.

Before the court evicts you without alternative accommodation, it must consider:

- The efforts made by both you and the owner to find alternative accommodation.
- The comparative hardships and interest of both you and the occupier.

If you began living on the land after 4 February 1997, there are only two circumstances in which a court can order an eviction:

1. If you and the owner had previously agreed that you would leave the property after a certain amount of time; or,

If the court decides that it would be just and equitable in the circumstances. To decide whether an eviction is just and equitable, the court will ask consider the following:

- How long you have lived on the property.
- Whether any agreement between you and the owner is fair.
- Whether there suitable alternative accommodation is available to you.
- The reason for the proposed eviction.
- The interests of the owner, weighed against your interests and whether the two can be balanced.

FOR MORE INFORMATION OR ASSISTANCE CONTACT:

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

6th Floor Aspern 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