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 sheet provides answers to some frequently asked questions about evictions and the protections ESTA offers.

Does ESTA apply when a business is liquidated or bought by a new owner?

YES.

Your status as an occupier and your rights under ESTA will not change if a business is sold. Similarly, ESTA will continue to apply if the business on which you live is liquidated. If, in either of these circumstances, the new owners want to evict you, they must follow the rules and processes set out in ESTA. If they do not do this their actions will be considered illegal.

What if the new owner wants to use the farm for different business purposes than it was used for under the previous owner?

The most important factor which tells us whether or not ESTA will apply is the zoning of the land. ESTA only applies to land which is zoned as “agricultural” and not as a township. As long as the zoning of the property does not change, it will not matter what type of business the property is used for.

The old property owner sold the farm on which I live to a new owner. The new owner did not know that there were occupiers living on the farm. How will this affect me?

In terms of the law, it is the duty of the seller (the previous owner) to inform the buyer (new owner) about occupiers living on the land. Your rights as an occupier to live on and enjoy the use of the property will not be affected. The new owner must take up any concerns he or she has about the sale with the previous owner, not with you as an occupier.

What rights do occupiers have in the case of a drought?

Water scarcity is a major problem for many farms. It is important to remember that you, as an occupier, have the right to basic municipal services, including the right to access water. Where an owner has control over access to water, he or she cannot abuse this power by cutting off your access to services. Any owner who does this is acting illegally.

However, where the situation is not in the owner’s control- like in the case of a drought, both the occupier and the owner should approach their relevant municipality for assistance.

Are there different protections under ESTA for workers who are classified as labour brokers, permanent workers and seasonal workers?

While these different categories of work have different effects on your working conditions, they do not impact whether or not ESTA can protect you. What matters is whether or not you are considered an occupier as defined in s1(1) of ESTA. ESTA does not depend on your status as an employee. Individuals who are employed through brokers, seasonal and permanent workers can be considered ESTA occupiers.

However, if your problem concerns your status as an employee there are different pieces of labour legislation which can help you. Examples of these kinds of issues would be: problems around leave, working conditions, working hours, etc.

Legislation that would help you understand your rights for these types of concerns are:

- The Labour Relations Act (LRA);
- The Employment Equity Act (EEA); and,
- The Basic Conditions of Employment Act (BCEA).
Am I bound by a contract if it is in a language I don’t understand and I have no knowledge of the contents?

This type of problem does not affect your status as an ESTA occupier, which means that ESTA will still protect you. The question then becomes whether or not you have a valid contract with the owner of the farm? The principle in law is that there cannot be a valid contract if both parties don’t know and understand what they are signing. However, a court will expect you to prove that you did not know what you were signing and you will have to bring evidence to court to do this.

What is the difference between PIE and ESTA?

Both of ESTA and PIE protect the rights of occupiers against unreasonable, unfair and illegal evictions. ESTA only applies to occupiers who live on farming or agricultural land. PIE applies to all occupiers. If you do not meet the ESTA definition of an occupier you can still seek legal protection under PIE.

In some cases, farm workers are supposed to get shares as part of their employment. Often these are sold without the workers knowledge, can anything be done to help this situation?

Schemes that claim to offer occupiers shares are most commonly found under BEE measures. Farm workers who find themselves in these situations need to demand copies of the schemes, along with the copy, you must insist that the purpose of the scheme is explained to you. You must also assert your right to get legal advice before signing a contract into one of these schemes.

If it comes to your attention that shares which were meant to be yours have been sold, it is important to contact a lawyer who can assess your matter. The circumstances of each case will be different and they will also have different chances of success.
What can be done if municipalities don’t have a housing plan?

Unfortunately, there are very few short-term housing solutions if a municipality does not have a housing plan. As an individual and as a community, you have the right to demand to see and evaluate housing plans. If a municipality states that they do not have plans, you are also allowed to demand an explanation as to why.

If you are facing an eviction, it is important to make attempts as an occupier to locate suitable alternative accommodation. ESTA requires that there is meaningful engagement between occupiers, the owner of the property and the municipality. This is to try to ensure that an eviction of occupiers does not lead to homelessness. The municipal housing plan would form part of their meaningful engagement with you, the owner of the property and the municipality. Therefore, if the municipality does not have a housing plan, this does not satisfy the ESTA requirement for meaningful engagement.

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