THE RIGHTS OF ESTA OCCUPIERS

The Extension of Security of Tenure Act (ESTA) was created to ensure that your constitutional rights as a farm worker are protected. ESTA specifically protects you against illegal and unpredictable evictions. This is because your right to live on a property with your family as well as your living conditions are tied to the fact that you or a member of your household are employed to work on the land. ESTA recognises that this makes you vulnerable to evictions, especially in cases of retrenchment or where for some reason 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 can be found in s1 (1): “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”.

Which constitutional rights are most applicable to ESTA occupiers?

You have the right to human dignity - this is one of the most fundamental human rights in our Constitution. When interpreting any other law, courts must consider the impact on human dignity before reaching any decision. This is important to remember because even in cases where the owner’s actions do not seem to break any law, they could still be unlawful if they infringe on your basic human dignity.

- If an owner enters an occupier’s dwelling and removes structures such as doors or ceilings this would be an infringement of human dignity.

You have the right to security of tenure - this is the right that protects you from unpredictable evictions; it can also apply to increases in rent.

You have the right to privacy - this is a fundamental constitutional right. This right protects you from having your home or property searched. It also means that your possessions cannot be seized and the privacy of your communications (letters, texts or postcards) must be respected.

You also have the rights to:

- **Freedom of belief, opinion and expression** - this is the freedom to express your feelings about situations and persons freely, however such expressions cannot be used to deliberately cause harm to another person’s reputation or character with false or misleading information.

- **Freedom of association** - this means you cannot be prevented from joining and leaving groups at your will. This right extends to social clubs and societies as well as legal and political groups like a trade union.

- **Freedom of movement** - your freedom of movement cannot be unnecessarily restricted. However ESTA does allow an owner to make reasonable restrictions to your movement around the property to protect their own life, property or to make sure there are no unnecessary interruptions to the work taking place on the land.

---

**Which rights are protected under ESTA?**

The specific rights contained in ESTA are there to make sure that you and your household are able to continue living in your home in a dignified way, without fear of being evicted without notice or without being given a reason. As an occupier you have the right to:

1. **Receive visitors**
   
   An owner cannot prevent you from receiving visitors, however this must be at reasonable times of the day and for reasonable lengths of time. If the visitor you let onto the property causes damage that you could have reasonably prevented, the owner is allowed to hold you responsible for their actions.

2. **Receive post**
   
   An owner cannot prevent you from receiving post or other types of communication.

3. **Bury a deceased relative**
   
   An owner cannot prevent you from burying a deceased relative, if the deceased relative lived on the property at the time of their death. You may also erect a tombstone, and perform rites on the land. This must be done in line with the deceased person’s religious and cultural beliefs.
4. **Visit and maintain the grave of a deceased family member on another property.**
   An owner cannot prevent you from visiting or taking steps to maintain the grave of a deceased relative. This applies to graves on the property you are living on and other properties owned by different people.

5. **Maintain a family life in line with the culture of that family**
   An owner cannot unreasonably limit your right to a family life. This includes more than just your parents, siblings and children. For example, an owner cannot prevent your children from living with you. This is a flexible right and could change depending on your family circumstances. The most important aspect of this right is that an owner cannot make demands from you which interfere with this right.

6. **Receive water and access to basic health care and educational services**

---

**The right to basic municipal services**

ESTA specifically states that you, as an occupier, have the right to not be deprived or denied access to water, electricity and health services. ESTA includes this right because control over access to services can be abused by owners who want you and your families to leave without getting an eviction order.
What if an owner disconnects my access to services or removes features from my home?

It is unlawful for an owner to disconnect your access to services or to remove features from your home. This is commonly referred to as “constructive eviction”. If an owner wants to evict you, he or she must get an order from the court. It is unlawful for him or her to make your living conditions so unbearable that you are forced to leave the property with your family.

What remedies do I have if an owner does this?

If an owner cuts off your water or electricity or otherwise tries to constructively evict you, your best remedy is approach a magistrate’s court for an order to stop the owner’s conduct and secure that the dwelling will be yours to stay in without any future disturbances.

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