

REPUBLIC OF SOUTH AFRICA

**PREVENTION OF ILLEGAL
EVICTION FROM AND UNLAWFUL
OCCUPATION OF LAND
AMENDMENT BILL**

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 27370 of 18 March 2005)
(The English text is the official text of the Bill)*

(MINISTER OF HOUSING)

[B 11—2005]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998, so as to amend a certain definition; to qualify the application of the Act; to amplify the provisions relating to the prohibition of certain acts and to create an offence in that regard; to amend the procedures for the eviction of unlawful occupiers; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 19 of 1998

1. Section 1 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (hereinafter referred to as “the principal Act”), is hereby amended by the substitution for the definition of “land” of the following definition: 5
 “**‘land’** includes a portion of land and buildings or structures on land;”.

Substitution of section 2 of Act 19 of 1998

2. The following section is hereby substituted for section 2 of the principal Act:

 “**Application of Act** 10

 2. (1) This Act applies in respect of all land throughout the Republic.

 (2) This Act does not apply to a person who occupied land—

- (a) as a tenant;
- (b) in terms of any other agreement; or
- (c) as the owner of land, 15

and who continues to occupy the land in question despite the fact that the tenancy or agreement has been validly terminated or the person is no longer the owner of the land.

 (3) Notwithstanding subsection (2), a court may order that this Act applies if the court is satisfied that any act or omission by the owner or person in charge of land was calculated to avoid the application of this Act.”. 20

Substitution of section 3 of Act 19 of 1998

3. The following section is hereby substituted for section 3 of the principal Act:

“[Prohibition of receipt or solicitation of consideration in respect of unlawful occupation of land] Prohibition of certain acts

3. (1) (a) No person may directly or indirectly receive or solicit payment of any money or other consideration as a fee or charge for participation in, or arranging [or organising] or permitting a person to occupy land without the consent of the owner or person in charge of that land. 5

(b) The money or consideration contemplated in paragraph (a) includes, but is not limited to, membership fees, legal costs, administration costs, services, service connection fees or payment for any socio-economic infrastructure: Provided that the reference to ‘legal costs’ shall not include money collected solely for the purposes of defraying legal costs associated with the opposition of proceedings for eviction. 10

(1A) No person may arrange or permit any person to occupy land without the consent of the owner or person in charge of that land. 15

(2) Any person who contravenes [a provision of] subsection (1) or (1A) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years, or to both such fine and such imprisonment.

(3) The court which convicts any person of a contravention of [this section] subsection (1) or (1A), must order any money or any assets acquired with such money, or other consideration received by that person which have been seized, to be forfeited, and the said money and the proceeds of the sale of such assets or such other consideration [may] must be paid— 20

(a) to the person or persons from whom the money, assets or other consideration was received; [and] 25

(b) where such person or persons cannot be positively identified, into the National Revenue Fund; or

(c) in the case where the land is owned by a municipality, into the relevant municipal operating account. 30

(4) If any money has been received in contravention of subsection (1) but has not been seized or made available for purposes of confiscation, the court which convicts any person of a contravention of this section, may order the amount proved to the satisfaction of the court to have been received by such person to be paid— 35

(a) to the person or persons from whom the money or other consideration was received [, and];

(b) where [such] the person or persons contemplated in paragraph (a) cannot be positively identified, into the National Revenue Fund; or 40

(c) where the land is owned by a municipality, into the relevant municipal operating account,

and such order has the effect of and may be executed against such person as if it were a civil judgment in favour of that person or persons from whom the money or other consideration was received or in favour of the State.”. 45

Amendment of section 4 of Act 19 of 1998

4. Section 4 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) At least 14 days before the hearing of the proceedings contemplated in subsection (1), the [court] person who institutes the proceedings must serve written and effective notice of the proceedings on the unlawful occupier and the municipality [having] in whose area of jurisdiction the land is situated.”; 50

(b) by the substitution for subsection (3) of the following subsection:

“(3) [Subject to the provisions of subsection (2), the] The procedure for the serving of notices and filing of papers in terms of this Act is as prescribed by the rules of the court in question.”; 55

- (c) by the substitution for subsection (6) of the following subsection:
- “(6) **[If an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women]** A court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all relevant circumstances, including—
- (a) the circumstances under which the unlawful occupier occupied the land;
 - (b) the period of occupation;
 - (c) the availability to the unlawful occupier of suitable alternative accommodation or land;
 - (d) the rights and needs of the elderly, children, disabled persons and households headed by women; and
 - (e) the constitutional rights and duties of all affected persons including the State.”; and
- (d) by the deletion of subsection (7).

Amendment of section 5 of Act 19 of 1998 20

5. Section 5 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
- “(2) Before the hearing of the proceedings contemplated in subsection (1), the **[court]** person who institutes the proceedings must give written and effective notice of the intention **[of the owner or person in charge]** to obtain an order for eviction **[of the unlawful occupier]** to the unlawful occupier and the municipality in whose area of jurisdiction the land is situated.”.

Amendment of section 6 of Act 19 of 1998

6. Section 6 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “An organ of state may institute proceedings for the eviction of an unlawful occupier from land which **[falls within its area of jurisdiction, except where the unlawful occupier is a mortgagor and the land in question is sold in a sale in execution pursuant to a mortgage,]** it administers or controls, and the court may grant such an order if it is just and equitable to do so, after considering all the relevant circumstances, and if—”; and
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) In deciding whether it is just and equitable to grant an order for eviction, **[the court must have regard to—**
- (a) the circumstances under which the unlawful occupier occupied the land and erected the building or structure;**
 - (b) the period the unlawful occupier and his or her family have resided on the land in question; and**
 - (c) the availability to the unlawful occupier of suitable alternative accommodation or land]** section 4(6) applies with the changes required by the context.”.

Short title

7. This Act is called the Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Act, 2005. 50

**MEMORANDUM ON THE OBJECTS OF THE PREVENTION OF
ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF
LAND AMENDMENT BILL, 2005**

1. BACKGROUND

The Bill seeks to rectify certain interpretation and implementation problems which have arisen since the promulgation of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998), hereinafter referred to as “the Act”.

2. OBJECTS OF THE BILL

2.1 The Bill seeks to extend the definition of the word “land” to include buildings or structures on land. Many buildings, particularly high-rise buildings have been and continue to be occupied unlawfully, often at the instance of non-owners who then collect rent from the illegal occupants.

2.2 There has been confusion as to whether or not the Act applies to proceedings for the eviction of erstwhile tenants or mortgagors who refused to vacate land after their leases were cancelled or on foreclosure of their bonds. The Supreme Court of Appeal has held that these categories of persons do indeed fall under the provisions of the Act—[*Ndlovu, Ngcobo, Bekker & another v Jika 2003 (1) SA 113 (SCA)*]. It is submitted that it is not desirable and that it was not the intention that the Act should apply to tenants and mortgagors who default in terms of their prior agreements with landlords and financial institutions, respectively. The Act should cover only those persons who unlawfully invade land without the prior consent of the landowner or person in charge of land. It has thus been necessary to amend section 2 of the Act (application section) to state specifically that the Act does not apply to a person who occupied land as a tenant, in terms of any other agreement or as the owner of land and who continues to occupy despite the fact that the tenancy or agreement has been validly terminated or the person is no longer the owner of the land.

2.3 A problem that may arise as a result of the amendment of section 2 is that an owner or person in charge of land may try to avoid the application of the Act, e.g. by entering into a simulated agreement with unlawful occupiers, only to terminate it shortly afterwards. In this regard the Bill seeks to grant a court the power to order that the Act applies if it is satisfied that any act or omission by the owner of land was calculated to avoid the application of this Act.

2.4 Whilst the Act currently prohibits the receipt or solicitation of money or other consideration as a fee for arranging for a person to occupy land without the consent of the owner, the act of arranging an unlawful occupation of land is not an offence. Due to the nature of and increase in land invasions, often on land which has already been earmarked for housing development, it is deemed necessary to make it an offence for a person to arrange the unlawful occupation of land. It is proposed to amend section 3 of the Act in this regard.

2.5 In respect of eviction proceedings before a court, section 4(6) and (7) of the Act currently draw a distinction between persons occupying land for less than six months and persons occupying land for more than six months. In cases of occupation of less than six months, the Act prescribes certain criteria which a court may take into account when deciding whether or not to issue an eviction order, whilst the Act prescribes different criteria in cases of occupation in excess of six months. This clearly constitutes unequal protection of a person’s right not to be evicted, as afforded by section 26(3) of the Constitution. The proposed amendments to the said sections remove the six months distinction and provide for a single set of criteria to be applicable in all cases of unlawful occupation.

2.6 Section 4(2) of the Act, as well as section 5(2) of the Act incorrectly provide that “the court must serve/give written and effective notice . . .”. This is clearly not the function of the court and it is proposed to amend the sections suitably.

2.7 As a consequence of the amendments to section 2 of the Act, the Bill seeks to amend section 6 accordingly.

3. PERSONS CONSULTED

3.1 The Bill was published in the *Gazette* for public comment, and inputs were received from 24 institutions which included—

- The Banking Council;
- Ekurhuleni Metro;
- Tshwane Metro;
- The provincial administrations of the Western Cape and KwaZulu-Natal;
- AGRI SA;
- SAPOA;
- Department of Justice;
- COSATU;
- Legal Resources Centre.

3.2 Consultation also took place with the Departments of Land Affairs and of Justice and Constitutional Development.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Housing are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.