

Chapter D4

EXTENSION OF SECURITY OF TENURE

| |
|---|
| The Extension of Security of Tenure Act 62 of 1997 |
|---|

| |
|--|
| came in operation on 28 November 1997. |
|--|

1. PURPOSE OF THE ACT

The purpose of the act is to provide for measures with State assistance -

- ▶ to facilitate long-term security of land tenure;
- ▶ to regulate the conditions of residence on certain land; to regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated; and
- ▶ to regulate the conditions and circumstances under which persons, whose right of residence has been terminated, may be evicted from land; and
- ▶ to provide for matters connected therewith.

1.1 Definitions - Section 1

“consent” means express or tacit consent of the owner or person in charge of the land in question, and in relation to a proposed termination of the right of residence or eviction by a holder of mineral rights, includes the express or tacit consent of such holder.

“established practice” means a practice in terms of which the owner or person in charge or his or her predecessor in title routinely gave permission to people residing on the land to bury deceased members of their family on that land in accordance with their religion or cultural belief.

“evict” means to deprive a person against his or her will of residence on land or the use of land or access to water which is linked to a right of residence in terms of this Act, and “eviction” has a corresponding meaning.

“occupier” means a person residing on land which belongs to another person, and who has on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding -

- (a) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but

- including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and
- (b) a person who has an income in excess of R5,000 per month as the amount.

“off-site development” means a development which provides the occupants thereof with an independent tenure right on land owned by someone other than the owner of the land on which they resided immediately prior to such development.

“on-site development” means a development which provides the occupants thereof with an independent tenure right on land on which they reside or previously resided.

“owner” means the owner of the land at the time of the relevant act, omission or conduct, and includes, in relation to the proposed termination of a right of residence by a holder of mineral rights, such holder in so far as such holder is by law entitled to grant or terminate a right of residence or any associated rights in respect of such land, or to evict a person occupying such land.

“person in charge” means a person who at the time of the relevant act, omission or conduct had or has legal authority to give consent to a person to reside on the land in question.

“suitable alternative accommodation” means alternative accommodation which is safe and overall not less favourable than the occupiers’ previous situation, having regard to the residential accommodation and land for agricultural use available to them prior to eviction, and suitable having regard to-

- (a) the reasonable needs and requirements of all of the occupiers in the household in question for residential accommodation, land for agricultural use, and services;
- (b) their joint earning abilities; and
- (c) the need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active.

“terminate” includes to withdraw consent to a person to occupy or use land.