

A guide on what to do if you are at risk of being evicted

To get this guide on WhatsApp, message "Risk of eviction" to **064 721 0958 (tel:0647210958)**

## Know your rights

- Everyone has the right to adequate housing and the state is obligated to take reasonable measures to satisfy that right.
- Section 26(3) of the Constitution (<http://myconstitution.co.za/en/02.html#housing>) states that "No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions." Everyone in South Africa has the right to access to adequate housing.
- The Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998 (PIE) ([https://www.acts.co.za/prevention-of-illegal-eviction-from-and-unlawful-occupation-of-land-act-1998/notice\\_no\\_789\\_of\\_1998](https://www.acts.co.za/prevention-of-illegal-eviction-from-and-unlawful-occupation-of-land-act-1998/notice_no_789_of_1998)) sets out the procedure and requirements to be followed in a lawful eviction. It also sets out the circumstances that the Magistrate should consider before ordering an eviction.
- Section 4 of PIE ([https://www.acts.co.za/prevention-of-illegal-eviction-from-and-unlawful-occupation-of-land-act-1998/4\\_eviction\\_of\\_unlawful\\_occupi](https://www.acts.co.za/prevention-of-illegal-eviction-from-and-unlawful-occupation-of-land-act-1998/4_eviction_of_unlawful_occupi)) states what should be in a section 4(2) notice, namely:
  - That the notice is being instituted in terms of s4 (1) for an eviction
  - The date and time of the court proceedings
  - Set out the grounds for the proposed eviction
  - State that you have the right to defend the case and apply for legal aid

## 1 Engage meaningfully with your landlord or building/land owner

### Who is this for?

If you have recently discovered you are at risk of being evicted from where you stay, here is some advice on the first step to take.

### What you need to know

- Attempt to have a conversation and allow both sides to try and understand the circumstances and resolve the matter. There are many different things that can cause an eviction.
- If meaningful engagement does not happen, or you can't resolve the issue, the legal process will start. This is when the court gets involved.
- Meaningful engagement is not a legal process, but it helps when the legal process starts because you are then able to say that you have made an attempt to resolve the matter.
- TIP!** Always keep a record of all your documents and conversations with your landlord or government officials. Write down the date and details of the conversation so that you always have proof it happened.
- Example: Angela Khumalo lives in a house/flat and has not paid her rent and is in arrears. She approaches the landlord to meaningfully engage and try and come to an arrangement with the landlord to pay the outstanding rent.

## 2 Receive a Notice Of Motion

### Who is this for?

This information is for people who have been through a meaningful engagement and no resolution was found. This is for people who are having a Notice of Motion served to them.

### What you need to know

- Find legal assistance.
- The document is served (given) to you by the Sheriff. You will sign acknowledgement of receipt. Your signature confirms that you have received the notice. This will be given to court as proof of service. This means it is used in court to prove that you received the document. The Sheriff should tell you what the document is. You can ask the Sheriff to explain to you.
- Attached to the Notice of Motion is an affidavit from the landlord or person in charge, describing the reasons for the eviction. This is called the **Founding Affidavit**.
- The Notice of Motion must also be signed by the legal representative of the owner / landlord (this is usually their lawyer).
- On the document you will see the word "APPLICANT". The landlord or landowner is the APPLICANT in the matter. The applicant is the party who starts the legal proceedings.
- The City of Cape Town **MUST** be cited (referred to) in every eviction application. This means their names should be on the document, and they are expected to respond.
- If you do not want to be evicted, it is very important for you to **OPPOSE** the eviction.
- If you do not go to court to oppose, the Magistrate can order an eviction order in your absence. This is known as a **DEFAULT JUDGEMENT**.
- EVEN IF YOU DO NOT HAVE A LAWYER**, go to court and oppose the matter and ask for a postponement to get a lawyer. Try to seek assistance and guidance when receiving any eviction documents.
- Here are a list of contacts and organisations who can assist you if you are served a Notice of Motion.
- TIP!** Look for these details on the notice of motion:
  - Court** - This is the court where you need to appear
  - Parties** - This is who is being evicted. Make sure the names are correct
  - Date** - This is the date you have to file papers to the court. This is when you hand your legal papers to the court. Date you have to appear in court
  - The document must state that it's an application in terms of s4(1) of PIE
  - The City must be cited as the Second Respondent
  - Service address** - This is where you should serve your opposing papers

## 3 Receive a Section 4(2) Notice

### Who is this for?

If you have had a Notice of Motion served to you, this explains what to expect next.

### What you need to know

- Find legal assistance. Who can help me?
- The Section 4(2) notice is a legal document that has to be served by the Sheriff to those being evicted. It is served to you with the Notice of Motion.
- The Notice of Motion and the Section 4(2) notice look the same in form and contain the same information.
- The only difference is that one is a notice of motion in terms of Section 4(1) and the other is a notice of service in terms of Section 4(2)2.

## 4 File a notice to oppose and file an opposing affidavit

### Who is this for?

You have received a Section 4(2) notice and should now take action on the next step

### What you need to know

- These documents are served by you or your legal representative on the landlord or landowner and their legal representative. It is your reply to the Notice of Motion.
- This step is very important. It makes it clear to the court that you do not want to be evicted, and are challenging the eviction.
- If you are opposing the application, you are called the **RESPONDENT(S)**. In eviction matters, the respondent is always the occupier/tenant?
- The Notice to Oppose is a simple document saying that you will oppose the eviction application. Remember: This must be filed with the court on date given in the Notice of Motion.
- A Notice to Oppose has the same structure as the Notice of Motion. The notice is signed by your legal representative.
- After you file the Notice to Oppose, the next document to file is the Opposing Affidavit. In the Opposing Affidavit; you reply to the things the landlord or landowner said against you in the Notice of Motion.
- Use this template (</docs/eviction-opposing-affidavit.pdf>) to easily write your affidavit
- Example: The Notice of Motion says you have not paid your rent. In your Opposing Affidavit you deny the allegation and explain that you have paid your rent. You will attach a proof of payment to show this.
- The Opposing Affidavit is important as it will be your side of the story that the court hears.
- It is important to reply to everything the landlord or landowner (APPLICANT) says in its documents given to the court. The landlord may put things in the court documents that are not true.
- If the court only receives papers from the landlord or landowner, the court accepts that version as the truth.
- The Opposing Affidavit is signed by you as the tenant/occupier.

## 5 The City of Cape Town files an affidavit/report

### Who is this for?

You have filed a Notice to Oppose and an Opposing Affidavit and are awaiting an affidavit/report from the City of Cape Town

### What you need to know

- City of Cape Town **MUST** be cited (referred to) in every eviction application. If the City of Cape Town is cited as the Second Respondent this means they also have to file an affidavit.
- Their affidavit has to state what alternative accommodation they have for the occupier or if the occupier will be made homeless in the eviction.

## 6 The landlord or owner files a replying affidavit

### Who is this for?

Learn about what the landlord or owner does next.

### What you need to know

- A replying affidavit is a chance for the landlord or landowner (the APPLICANTS) to reply to the version of events you put before the court in your opposing affidavit.
- The landlord or landowner will have a chance to deny or accept your version.
- This is also the opportunity for the landlord or owner to reply to the affidavit by the City.

## 7 File a supplementary affidavit

### Who is this for?

Read on if you have filed your opposing order to understand what happens next.

### What you need to know

- A supplementary affidavit is a document where the occupiers (the RESPONDENTS) will have a chance to respond to any new matters that have come up during the legal proceedings.
- This is a chance to reply to the applicant's replying affidavit, the affidavit by the City as well as a chance to add anything you might have left out of your opposing affidavit.
- TIP!** Remember an eviction matter is an application procedure. This means everything is argued on papers and not by witnesses. It's important to provide ALL information in your affidavit.

## 8 Argument in court

### Who is this for?

Once you have filed your supplementary affidavit, learn what to expect in court.

### What you need to know

- Once all the documents have been filed in court, a date is given for the court hearing. A court hearing is where the arguments between the APPLICANTS and RESPONDENTS are heard by a judge.
- In a hearing, everything that has been placed on affidavit will be argued in court.
- Once the court has heard all the information, the judge will make an **ORDER**. They will take into consideration all the relevant factors. If the judge decides to evict you, they will issue a court order.

## 9 Receive a court order

### Who is this for?

After the court hearing, you might receive a court order.

### What you need to know

- A court order is a decision by a judge. In an eviction, the court order must be communicated to you in a document by the sheriff. The court order will give you a date when you have to be evicted by.
- A court order is **LAWFUL** when all the correct proceedings mentioned above have been followed.
- Only once a court has made an order, can a **SHERIFF** evict you.

## 10 Find out who can assist

**Legal Resources Centre**  
54 Shortmarket Street  
Greenmarket Square  
Cape Town  
021 481 3000 (tel:0214813000)

**Cape Law Society**  
2 Riebeck Street  
Cape Town  
021 443 6700 (tel:0214436700)

**Cape Town Legal Aid**  
5 Church Street  
Zonnebloem  
Cape Town  
021 426 4126 (tel:0214264126)

**Ndifuna Ukwazi**  
18 Roland Street  
Cape Town  
021 012 5094 (tel:0210125094)

These guides were developed with support from NU (<http://nu.org.za/>) and Reclaim the City (<http://reclaimthecity.org.za/>).