At Risk of Eviction

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

Who is this for?

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

Know your rights

- You have the right to adequate housing and the state is obliged to take reasonable steps to provide it (section 26 of the Constitution and http://www.saflii.org.za/za/legislation/consolidated_act/constitution_of_the_republic_of_south_africa_1996/s26.html).
- You have the right to be treated with respect and dignity and not to be unfairly discriminated against (section 10 and section 9 of the Constitution).
- Unlawful eviction and illegal evictions from your home are prohibited (http://www.saflii.org.za/za/legislation/consolidated_act/prevention_of_illegal_eviction_and_unlawful_occupation_of_land_1998/ and http://www.saflii.org.za/za/legislation/consolidated_act/prevention_of_illegal_eviction_and_unlawful_occupation_of_land_1998/s4.html).
- Evictions must be carried out in a humane and dignified manner and should consider before ordering an eviction.
- Police have no jurisdiction over illegal eviction from and unlawful occupation of land.
- Evictions are a last resort, and should always be preceded by a notice, which should include:
  - The date by which the person must leave (at least 14 days);
  - The reason for the eviction;
  - Where the person must go to (the name of a place);
  - Contact details of the municipality;
  - Get out the grounds for the proposed eviction;
  - State that you have the right to appeal the case and apply for legal aid.

Engage meaningfully with your landlord/ owner

Who is this for?

If you have recently discovered you are at risk of being evicted, or where you delay, here is some advice on what to do.

What you need to know

- Communicate with your landlord and allow both sides to try and resolve the problem before you take 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 a long process and can take months.
- Meaningful engagement is not a formality. It means that the legal process starts because you are then aware that you have made an attempt to resolve the matter.
- Keep a record of all your dealings with your documents and conversation with your landlord or management officials. Write down the date and time of the conversation so that you always have proof if something happens.

Example: Sipho's landlord lives in a houseflat and has not paid her municipal bill. Sipho's water is cut off.

Sipho's landlord's neighbour, who is the municipal manager, has an arrangement with the municipality to pay the outstanding bill.

Receive a Notice Of Motion

Who is this for?

Information is for people who have been through a meaningful engagement but it has failed and found. This is for people who are at risk of being evicted or who have been evicted.

What you need to know

- The document is served (given) to you by the Sheriff of the Court as acknowledgement of receipt. You must sign to show that you received the notice. This will be given to court as proof of service. Keep a copy in case you need to prove that you received the notice. Write down the date and time you received the document and the name of the person who gave you the document.
- If you do not want to be evicted, you must oppose the eviction. OPPOSE the eviction.
- If you do not do anything, the court will grant the order. This is called an "order by default".
- 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 must appear in the court. This is when you have your hearing. Make sure that you have a copy of the court.
- Statement that the court will grant the order if you do not appear and be legal aid.

File a notice to oppose and file an opposing affidavit

Who is this for?

You have received a Section 4(2) notice and you want to take action the next step.

What you need to know

- These documents are served by your or your legal representative on the landlord or landowner and their legal representative and filed with the Notice of Motion.
- This is a very important. It makes it clear to the court that you are opposing the eviction and that you have a right of appeal to show this.
- The Opposing Affidavit is important as it will be your side of the story. Be honest.
- It is important to reply to everything in the Notice of Motion. Your Opposing Affidavit is your chance to tell your side of the story and show why the court should not grant the order.
- Example: The Notice of Motion says you have not paid your rent. The Opposing Affidavit is your chance to explain why you have not paid your rent. You can also say that you have to be evicted.
- Their affidavit has to state what happened and what happened to your version.
- This is the opportunity for the landlord or owner to reply to the Opposing Affidavit.
- TBR: Remember an eviction matter is an application. This means everything is argued on paper. It is important to provide information in your affidavit.

Attend the court hearing

Who is this for?

Once you have filed your Opposing Affidavit, learn what to expect in court.

What you need to know

- Once all the documents have been filed, it can take a year for a court hearing. A court hearing is when the Commissioner hears the APPLICANTS and RESPONDENTS. It can be heard by a judge.
- Organisations who can help you: Legal Resources Centre (http://lrc.org.za) 54 Drummond Street Cape Town (021 423 8398) Legal Aid South Africa (http://legalaid.net/cape-town-contact-us) 2 Long Street Cape Town (021 405 5700; 0861234567000) Cape Town Legal Aid (http://www.legalaid.co.za/?page_id=4234) 2 Long Street Cape Town (021 405 5700; 0861234567000) Wolfaria Uwezi (http://no.org.za/) 15 Russell Street Cape Town (021 512 5094; 021 512 5094)

Find out who can assist

Who is this for?

Anyone who needs assistance with navigating process.

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