Form 4
Notice of Eviction

A guide on what to do if you are a tenant or occupier in a residential property.

☎ To get this guide on WhatsApp, message "Hi" or send "Hi" to 082 808 2046 (WhatsAppHub).

Support

These guides were developed with support from the Ford Foundation and Reclaim the City (www.reclaimthecity.org.za).

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Know your rights

- Everyone has the right to adequate housing and the state is obliged to take reasonable measures to satisfy that right.
- Section 26(3) of the Constitution (https://www.gov.za/documents/constitution/chapter-2-bill-rights#26) says 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.[1] 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.gov.za/documents/prevention-illegal-eviction-unlawful-occupation-land-act-19%E2%80%94-01_789_of_1998) sets out the procedure and the requirements to be followed in a lawful eviction. It also sets out the circumstances in which a landlord should consider before ordering an eviction.[2]
- Section 4 of PIE (https://www.acts.co.za/prevention-of-illegal-eviction-from-and-unlawful-occupation-of-land-act-1998/#section-4) says that:
  - The notice to leave (instead in terms of Section 4(1) for an eviction order) must be in writing.
  - The date and time for the hearing of the application.
  - Set out the grounds for the proposed eviction.
  - State that you have the right to defend the case and apply for legal aid.

Engage meaningfully with your landlord or landlord's agent

Who is this for?

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

What you need to know

- Attempt to have a conversation and allow both sides to be upset about the circumstances and resolve the matter. Do not let your emotions get in the way, cause an escalation.
- If meaningful engagement does not happen, or you cannot 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 you show that the process starts because you are then able to show that you tried to talk and resolve the matter.

TIP! Always keep a record of all your documents and conversations with your landlord or government. Write down the date and details of the conversation so that you always know what it happened.

Example: Angela Khumalo lives in a household 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 the to pay the outstanding rent.

Receive a Notice Of Motion

Who is this for?

This information is for people who have been through a meaningful engagement but have not found a solution. This is for people who are having a Notice of Motion served to them.

What you need to know

- First legal document you can receive (Step 1 See step 10
- The document is served (given) to you by the Sheriff. You will sign acknowledgement of receipt. Keep the document that you have received the notice. This will be given back as proof of service. This document is used in court to prove that you received the document. The Sheriff will not give you what the document is. You can ask the Sheriff questions.
- Attached to the Notice of Motion is an affidavit (a sworn statement of facts or charge, describing the reason for the eviction. This is called the **Founding Affidavit**.
- The Notice of Motion must also be signed by the legal representative of the person that you have received the notice. This will be given back as proof of service. This document is used in court to prove that you received the document. The Sheriff will not give you what the document is. You can ask the Sheriff questions.
- The City of Cape Town MUST be cited (referred to) in every application to evict. This means their names should be on the document, and they must be served (given) a copy.

TIP! Look for these details on the notice of motion:

1. Court – This is the court where you need to appear
2. **Parties** – This is who is being evicted. Make sure the names are correct
3. **Date** – This is the date you have to be in papers to the court. This is when you hand your legal papers to the court. Date you have to appear in court
4. The document states "YOU MUST BE PRESENT" application in terms of Section 4(1) of PIE
5. The City must be cited as the Second Respondent
6. **Service address** – This is where you should receive legal papers

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

- First legal document you can receive (Step 1 See step 10
- The Section 4(2) notice is a legal document that has to be served by the Sheriff to those being evicted. It is also called 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).

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 your role to "APPLICANT".
- 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 cases, the landowner is the applicant.
- The Opposing Affidavit is signed by you and the tenant/occupier.
- The Opposing Affidavit is served on the landlord or landowner, the court accepts their version as true.
- 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 documents that are not true.
- If the court only receives papers from the landlord or landowner, the court accepts their version as true.
- The Opposing Affidavit is signed by you and the tenant/occupier.

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. The City of Cape Town is cited as the Second Respondent this means they also have to file papers.
- The affidavit has to state what alternative accommodation is available for the occupier or the occupier will be made homeless in the eviction.

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 (APPLICANT) 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 reply and accept your version.
- This is also the opportunity for the landlord or owner to reply to the City of Cape Town.

File a supplementary affidavit

Who is this for?

Read on if you have filed your opposing affidavit 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 process.
- This is a chance to reply to the applicant's replying affidavit. It is important for you 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 process. Make sure everything is argued on papers and not by witnesses. It's important to provide ALL information in your affidavit.

Argument in court

Who is this for?

Once you have filed your supplementary affidavit, learn what happens next.

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 APPLICANT and RESPONDENT(S) are heard by a judge.
- At a hearing, everything that has been placed on affidavit will be argued in court.
- Once the court has received all information, the judge will make a decision. The judge will take consideration all the relevant factors. If the judge decides to evict you, the order will be a court order.

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. This is called a court order or you a 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.

Find out who can assist

Legal Resources Centre
54 Shortmarket Street
Greenmarket Square
Cape Town
021 481 0300 (tel 0214810300)

Cape Town Legal
2 Flatlands Road
Cape Town
021 443 6700 (tel 0214436700)

Ford Foundation
5 Church Street
Zonnebloem
Cape Town
021 426 4126 (tel 0214264126)

Rathfoss Ellerton
18 Rosland Street
Cape Town
021 012 5054 (tel 0210125054)