

PART C: IMPLEMENTATION

CHAPTER 8 DEALING WITH LAND INVASIONS

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8.1 DEFINITION

“Land Invasion” refers to the illegal occupation of land, with the intention of establishing dwellings / a settlement upon it. An invasion may be by one individual or by hundreds of households - but the nature of the problem and the measures required to deal with it are the same.

There are various situations where illegal land invasions cannot be tolerated: The land may be reserved for another use, it may be land of particular environmental significance, it may be subject to flooding. It could be land which is about to be developed as housing for identified beneficiaries and another group invades the land.

8.2 LAND OWNERSHIP

The owner of the land must be identified as soon as the invasion is discovered. Where the land is privately owned, the owner should be notified. Where the local authority is the owner, urgent action must be taken.

8.3 AUTHORITY TO ACT

8.3.1 Government policy

There is clear recognition, in all three spheres of Government, that the unlawful occupation of land [squatting/land invasion] is, apart from the many problems that it creates, one of the biggest threats to ownership, good governance and developmental efforts in accomplishing proper urban management.

8.3.2 Legal requirements

However, it must be clearly understood that it is unconstitutional to evict anybody or to demolish any dwelling without due process of law - no legislation may authorise arbitrary evictions. The Constitution and the Prevention of Illegal Eviction from an Unlawful Occupation of Land Act, Act No. 19 of 1998 (see 1.5.2.6) is clear in this respect - no evictions without a court order!. The applications for such a court order are time consuming and costly.

Eviction orders will normally only be granted if alternative accommodation or land can be made available for settlement.

8.3.3 Prevention

It is thus of crucial importance that pro-active steps are taken to prevent land invasions and secure properties. The fencing of properties and monitoring there-of could ensure that unlawful occupation is either prevented or immediately observed. Lighting and signage, where appropriate, can also assist as a deterrent or in asserting the owner's rights. Forging of alliances against land invasions between spheres of government, community structures/civil society, councillors, officials, etc. is of paramount importance here!

8.4 TAKING ACTION

As many Constitutional issues are frequently raised in contentious matters of this nature, it is not only imperative to act speedily but to ensure that you receive proper legal advice to enforce your rights to an eviction order and to regain possession of your property in the most time and cost effective manner. Although land owners are made to incur the time and cost of obtaining such a court order some of the courts are supportive of such orders in asserting the fundamental principles of rights of ownership.

Make sure therefore that you know your rights and take measures to prevent these invasions and if it has proved impossible to prevent them occupying the property, immediately seek legal advice and obtain your orders so that you can regain possession of your property.

If an unlawful occupation does take place swift action is required. The following steps may be considered: -

8.4.1 If someone is in the process of occupying the land and erecting a structure [Please refer to section 1(i) of Act 19/1998] (see 1.5.2.6)
In this event the owner can remove the structures only partially complete or complete but not yet occupied. This is known as “counter-spoliation”. There is no time limit to the period in which you can counter-spoliate. The requirements are that the structure is either partially complete and/or unoccupied.

8.4.2 If people are in the process of erecting structures, which are not yet occupied or have shown an intention to do so by, for example, pegging out ground
In this event an urgent interdict should be sought interdicting them from occupying the property. This will stop the flow of persons onto the property and also if it is obtained before the people take occupation will have the effect that anyone in contempt of that order will be arrested and the costly and time consuming process of applying for an eviction order will be avoided.

8.4.3 If persons are already occupying the structure
In this event a landowner may not remove the occupiers or their structures without a court order (see 8.3.2). A landowner can urgently approach the court for an eviction order where there will be undue hardship to the owner or where there is a real and imminent danger of injury or damage to person and/or property.

Ordinarily, a landowner will need to give the squatters fourteen working days notice of intention to launch an application for their eviction (see section 12 of Act 19/1998).

It is imperative that the landowner or the security firm monitoring the property knows what details will be required for such a court order. This includes details of the personal circumstances of the squatters (including names, ID numbers, ages, health conditions, employment status), how and when the invasion took place and proof of ownership rights. They should immediately be communicated to the owner’s attorneys to avoid delays or the refusal of an order because all the appropriate facts were not placed before the court.

8.4.4 Implementation of an eviction order
If and when court order is obtained the sheriff will read the order to the community and where possible, staff of the local authority can assist with the legal demolition.

The materials should be taken away and stored some distance from the site, so that they cannot be easily collected and illegally re-erected.

The site must be monitored to prevent non-compliance with the order and re-erection.

8.4.5 Alternative accommodation

If a claim is brought before the court within six months of the date of occupation the court is not required to establish whether alternative accommodation is available for the squatters.

If six months or more has lapsed since the squatters occupied the property the court will consider the factors set out above and whether alternative accommodation can reasonably be made available to the squatters.