

South Africa

Extension of Security of Tenure Act, 1997

Regulations under Extension of Security of Tenure Act, 1998

Government Notice R1632 of 1998

Legislation as at 23 February 2018

FRBR URI: /akn/za/act/gn/1998/r1632/eng@2018-02-23

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PDF created on 22 February 2024 at 00:16.

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Published in Government Gazette 19587 on 18 December 1998

Commenced on 18 December 1998

[This is the version of this document from 23 February 2018.]

[Amended by Regulations under Extension of Security of Tenure Act: Amendment (General Notice 72 of 2018) on 16 February 2018]

[Amended by Regulations under Extension of Security of Tenure Act: Amendment (General Notice 84 of 2018) on 23 February 2018]

The Minister of Land Affairs has under section 28(1) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) made the regulations in the Schedule.

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act, shall have that meaning and, unless the context otherwise indicates—

“**day**” means a calendar day;

“**official language**” means an official language listed in section 6(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“**regulations**” includes the forms in the Annexure;

“**sheriff**” means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), and a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively;

“**the Act**” means the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997); and

“**week day**” means any day except Saturday, Sunday or a public holiday

2. Qualifying income

- (1) The prescribed amount for the purposes of paragraph (c) of the definition of “occupier” in section 1(1) of the Act shall be an income of R13, 625.00 per month.

[subregulation (1) substituted by section 2 of General Notice 72 of 2018 and by section 2 of General Notice 84 of 2018]

- (2) For the purposes of subregulation (1) “income” means—

- (a) a person’s gross monthly cash wage or salary; or
- (b) where a person earns money—
 - (i) other than in the form of a monthly cash wage or salary, the average monthly amount of such person’s gross earnings during the immediately preceding year; or

- (ii) in addition to a monthly cash wage or salary, such person's gross monthly cash wage or salary together with the average monthly amount of such person's additional gross earnings during the immediately preceding year:

Provided that remuneration in kind shall not be taken into account.

3. Application for certification as an owner or person in charge

- (1) An application by a person for certification as an owner or person in charge as defined in section [1\(2\)\(a\)](#) of the Act must be submitted to the Director-General on Form A or must conform substantially to Form A in the Annexure.
- (2) In the event of the Director-General approving such an application, he or she must issue a certificate on Form B or a certificate conforming substantially to Form B in the Annexure.

4. Form of notice in terms of section 7(1)

A notice to an occupier in terms of section [7\(1\)](#) of the Act must be in writing and shall be completed on Form C or must conform substantially to Form C in the Annexure.

5. Form of notice in terms of section 8(5)

A notice to an occupier in terms of section [8\(5\)](#) of the Act must be completed on Form D or must conform substantially to Form D in the Annexure.

6. Form of notice in terms of section 9(2)(d)

A notice to an occupier, municipality, or head of a provincial office of the Department of Land Affairs in terms of section [9\(2\)\(d\)](#) of the Act must be completed on Form E or F or must conform substantially to Form E or F in the Annexure, as the case may be.

7. Form of notice in terms of section 10(1)(b)

A notice to an occupier in terms of section [10\(1\)\(b\)](#) of the Act must be completed on Form G or must conform substantially to Form G in the Annexure.

8. Form of notice in terms of section 23(5)(b)

A notice to a public prosecutor in terms of section [23\(5\)\(b\)](#) of the Act must be completed on Form H or must conform substantially to Form H in the Annexure.

9. Manner of service

- (1) Service of a notice in terms of section [7\(1\)](#), [8\(5\)](#) or [10\(1\)\(b\)](#) of the Act on an occupier must be effected—
 - (a) by reading the highlighted part of a copy of the notice to the occupier in the official language which the occupier understands best and thereafter delivering to the occupier one copy of the notice in that language and another copy in another official language, where the notice is completed on Form C, D or G in the Annexure; or
 - (b) by reading the portion equivalent to the said highlighted part, of a copy of the notice to the occupier in the official language which the occupier understands best and thereafter delivering to the occupier one copy of the notice in that language and another copy in another official language, where the notice conforms substantially to Form C, D or G in the Annexure, respectively.

- (2) Service of a notice in terms of section [9\(2\)\(d\)\(i\)](#) of the Act on an occupier must be effected by the sheriff within whose area of jurisdiction the land in question is situated—
 - (a) by reading the highlighted part of a copy of the notice to the occupier in the official language which the occupier understands best and thereafter delivering to the occupier one copy of the notice in that language and another copy in another official language, where the notice is completed on Form E in the Annexure; or
 - (b) by reading the portion equivalent to the said highlighted part, of a copy of the notice to the occupier in the official language which the occupier understands best and thereafter delivering to the occupier one copy of the notice in that language and another copy in another official language, where the notice conforms substantially to Form E in the Annexure.
- (3) Where necessary, an interpreter must be used for reading the highlighted part of a copy of a notice contemplated in subregulation [\(1\)](#) or [\(2\)](#).
- (4) Where the person serving a notice in terms of subregulation [\(1\)](#) or [\(2\)](#) is unable to serve the notice on the occupier personally, service must be effected—
 - (a) by leaving a copy of the notice in an official language which the occupier is reasonably believed to understand best, and in another official language, at the occupier's place of residence with a person apparently in charge of the premises at the time of delivery and apparently not less than 16 years of age;
 - (b) by affixing a copy of the notice in an official language which the occupier is reasonably believed to understand best, and in another official language, to the door of the occupier's place of residence; or
 - (c) by sending a copy of the notice in an official language which the occupier is reasonably believed to understand best, and in another official language, by registered post to the occupier's last-known postal-address.
- (5) Service of a notice on an occupier who is under the age of 18 years may be effected by citing the name of the occupier on a notice served on an adult member of the household in which the occupier is ordinarily resident.
- (6) Service of a notice on a municipality or provincial office of the Department of Land Affairs in terms of section [9\(2\)\(d\)\(ii\)](#) or [\(iii\)](#) of the Act or on a public prosecutor in terms of section [23\(5\)\(b\)](#) of the Act must be effected—
 - (a) by handing a copy of the notice to the Chief Executive Officer, Town Clerk, Deputy Town Clerk, Assistant Town Clerk or any person apparently authorised to act on his or her behalf, in the case of a municipality;
 - (b) by handing a copy of the notice to the director of the provincial office concerned or any person apparently authorised to act on his or her behalf, in the case of a provincial office of the Department of Land Affairs;
 - (c) by handing a copy of the notice to the public prosecutor concerned or any person apparently authorised to act on his or her behalf, in the case of a public prosecutor;
 - (d) by sending a copy of the notice by registered post to the municipality, provincial office or office of the public prosecutor concerned; or
 - (e) by transmitting a copy of the notice by telegram, telex or telefax to the municipality, provincial office or office of the public prosecutor concerned.
- (7) Service of all notices required to be served in terms of these regulations must be effected between 06h00 and 20h00 on any day, unless otherwise directed by a court.

- (8) Where sendee is effected by hand, an additional copy of the notice must be prepared, and the person receiving the notice must be requested to sign and date this copy and return it to the person serving the notice.

10. Presumption relating to time of service

Where service is effected by registered post, it shall be presumed that service was effected on the seventh week day following the day on which the notice was posted, unless the contrary is proved.

11. Proof of service

- (1) It shall be presumed, unless the contrary is proved, that service of a notice under these regulations has been duly effected if the party alleging such service produces in court—
- (a) an acknowledgment of receipt signed by the person on whom the notice was required to be served or by a person accepting service on his or her behalf;
 - (b) a return of service from the sheriff indicating that service was duly effected in terms of regulation 9;
 - (c) in the case of service by registered post, the relevant Post Office certificate; or
 - (d) in the case of service by electronic means, a copy of the relevant transmission slip showing the date and time of service.
- (2) If the court hearing a matter is not satisfied that service was effected in accordance with these regulations or if the court is not satisfied that a copy of the notice was in fact received by the person on whom it was required to be served, it may make such order as it deems fit.

12. Criteria for recognition of persons, bodies or institutions responsible for promotion of implementation of rights conferred by Act

- (1) In considering whether to recognise a particular person, body or institution for the purposes of section 2(3) of the Act, the Minister shall have regard to:
- (a) the competence of such person, body or institution to promote the implementation of the rights conferred by the Act;
 - (b) the cost-effectiveness of any proposal made by such person, body or institution regarding the implementation of the rights conferred by the Act;
 - (c) the experience that such person, body or institution has in assisting people who do not have secure tenure of their homes;
 - (d) the financial controls that such person, body or institution undertakes to impose on the use of any funds that may be made available by the Minister;
 - (e) relevant language skills of such person, body or institution; and
 - (g) any other criteria that the Minister may consider to be relevant.
- [Please note: numbering as in original.]*
- (2) If at any stage after the recognition of a person, body or institution under section 2(3) of the Act the Minister becomes aware of allegations of financial impropriety against such person, body or institution, he or she may, after establishing the truthfulness of such allegations, withdraw such recognition, cancel any agreement with that person, body or institution, or impose special conditions in respect of continued recognition of that person, body or institution.

13. Criteria for recognition of persons or bodies responsible for facilitation, implementation or undertaking of development

- (1) In considering whether to recognise a person or body for the purposes of section [4\(4\)](#) of the Act, the Minister shall have regard to:
 - (a) the competence of such person or body to facilitate, implement or undertake a development;
 - (b) the cost-effectiveness of any proposal made by such person or body regarding the facilitation, implementation or undertaking of the development in question;
 - (c) the experience that such person or body has in facilitating, implementing or undertaking developments of the kind contemplated in section [4](#) of the Act;
 - (d) the financial controls that such person or body undertakes to impose on the use of any subsidies which may be granted by the Minister;
 - (e) the degree of support that such person or body enjoys among the owners, occupiers and government departments concerned;
 - (f) relevant language skills of such person or body; and
 - (g) any other criteria that the Minister may consider to be relevant.
- (2) If at any stage after the recognition of a person or body under section [4\(4\)](#) of the Act the Minister becomes aware of allegations of financial impropriety against such person or body, he or she may, after establishing the truthfulness of such allegations, withdraw such recognition, cancel any agreement with that person or body or impose special conditions in respect of continued recognition of that person or body.

14. Repeal of regulation

The regulation published by Government Notice No. RI 596 of 28 November 1997 is repealed.

Annexure

Forms

[Editorial note: The forms have not been reproduced.]