



KAAP AGULHAS MUNISIPALITEIT
 CAPE AGULHAS MUNICIPALITY
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POLICY ON FARM EVICTIONS

LEGAL PROVISIONS

The Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) provides that measures should be put in place with State assistance to facilitate long-term security of land tenure; to regulate the conditions of residence on certain land; to regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated; and to regulate the conditions and circumstances under which persons whose right of residents has been terminated, may be evicted from land.

The prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 2 of 1998) further provides for the prohibition of unlawful eviction; for procedures for the eviction of unlawful occupiers; and to repeal the Prevention of Illegal Squatting Act, 1951, and other obsolete laws.

The Preamble of the above-mentioned Act stipulates that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property; 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; it is desirable that the law should regulate the eviction of unlawful occupiers from land in a fair manner, while recognising the right of land owners to apply to a court for an eviction order in appropriate circumstances; special consideration should be given to the rights of the elderly, children, disabled persons and particularly households headed by women, and that it should be recognised that the needs of those groups should be considered.

RESPONSE TO EVICTION NOTICES

The Act provides that at least 14 days before the hearing of the proceedings intended to evict a land occupier, the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction in the particular area. This therefore, means that the municipality in whose area of jurisdiction the land is situated where an illegal occupier has to be evicted bears the responsibility of having to assist in finding alternative accommodation for the evicted person/persons. In assisting lawfully evicted persons Cape Agulhas Municipality should attempt to negotiate with the owner of the affected piece of land.

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act no. 19 of 1998) in section 7 provides for mediation in that the municipality in whose area of jurisdiction the land in question is situated is not the owner of the land the municipality may, on conditions that it may determine, appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act: Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute, on the conditions that the municipality may determine.

PROVISION OF EMERGENCY HOUSING / SHELTER

Cape Agulhas Municipality must commit itself to fulfilling its Constitutional and legislative mandate and to ensure that it takes all reasonable and necessary steps, within its resources, to ensure the progressive realisation of the right to adequate housing. Surely, the municipality faces a large backlog and cannot meet the housing demand with its own resources within a short period of time.

The municipality acknowledges that in accordance with the findings of the Constitutional Court in *Government of the Republic of South Africa and Others v Grootboom and Others* 2001(1)-SA 46 (CC) – the State bears a responsibility to provide special measures for those in desperate need.

In cases in which individuals or single households specifically evicted from farms are left homeless and in desperate need for any reason, including eviction from existing accommodation, the Municipality must come up with clear emergency housing / shelter for a defined period of time.

LONG – TERM SOLUTION

Recognising the need to formalise its approach to assist those who are left homeless and in desperate need, the Municipality will have to budget in the long – term in order to acquire serviced plots and building materials. The amounts indicated in the Municipality's budget must be utilised to install basic services to these properties.

It must be noted that until such time as "emergency land" can be developed, the Municipality will have to rely on ad hoc solutions to individual situations as and when the need arises.

The emergency housing supplied by the Municipality to those in desperate need must be limited to the absolute essentials and must clearly be of a temporary nature only once the land has been developed. Once "emergency land" has been developed, a partial serviced plot will also be made available.

The Municipality appreciates that such emergency housing must be rudimentary, particularly for those persons who are evicted from formal dwellings.

MOTIVATING CONSIDERATIONS

First, it would be unfair and untenable if those in emergency housing enjoyed better conditions than those persons waiting on the ordinary housing queue. The upshot would be that people could improve their situation by engineering an emergency situation, so as to 'jump' the ordinary housing queue.

Secondly, the Municipality resources are limited. The need to provide emergency housing must be balanced against the imperative of constructing greater numbers of formal houses. The Municipality must prevent a situation in which a housing policy is jettisoned in favour of a system of crisis management.

Thirdly, the emergency housing must be temporary. Those in such housing must in time be accommodated in formal housing. This may take some time as per policy and the waiting list.

Fourthly, the Court in the *Grootboom* case highlighted that no minimum content could be attributed to that which constitutes adequate housing. The adequacy must be determined based on the available facts and the resources available.

Fifthly, the availability of such housing must be measured at the time of need arising as, taking into account the nature of an emergency, as it is impossible to gauge the need prior to such need arising.

This would similarly apply to the individuals in question. The emergency only arises once the Court has found that the necessary grounds exist for an eviction order to be granted.