

LAND OCCUPATION

GUIDE ON UNLAWFUL LAND OCCUPATION FOR LAND OWNERS

Introduction

It is crucial that all landowners and persons in charge of land need to know what they have to do in the event of a land invasion. This document is a summary of the most important precautions and proposed actions. Due to complex legislation, it is important to seek legal advice from a practicing attorney as soon as squatters start occupying a piece of land. It would not be wise to consult a practicing attorney who is not knowledgeable in this particular area. The attorney must have the necessary experience and expertise.

Starting point

Individuals have various rights and means to protect their property rights. In practice, however, it becomes difficult to practice all these rights as an individual. This document is written from the perspective that there should be joint action by individuals within the community; in other words, property rights can be protected by an organised community structure. Practical guidelines on how this can be done, are set out in this document.

Prevention

It is easier and cheaper to prevent land occupation than to engage in lengthy legal proceedings for eviction. The following may help:

1. Get involved in your local AfriForum structure and/or security company.
2. Be alert and aware of everything that happens on your land.
3. Patrol the area and ask the neighbourhood watch or security company to be on the lookout for new or unfamiliar structures.
4. If workers or occupants are living on your land, get as much information about them as possible (for example, name lists and ID copies) so that people who do not belong there, can be easily identified.
5. Apply strict access control. Do not let strangers use your land as a thoroughfare.
6. It is important to build a good relationship with the local police and also to get involved with your local neighbourhood watch or community policing forum (CPF).
7. If you cannot be on the land for a period of time, make alternative arrangements for supervision, for example with your neighbourhood watch or security company. Do not make it widely known that you will be out of town for a certain period of time.
8. It is important to keep a record of and to take photos of unknown persons and vehicles in the area. Also state the date, time and place where the persons or vehicles were noted. Inform your local neighbourhood watch or security company.
9. Lodge complaints with the police in terms of the Trespass Act, 1959 (ACT No. 6, 1959) against all unlawful intruders. ■ Attached is an example (page 4) of an affidavit regarding trespassing that can be submitted at the police station.
10. Make sure that you get a proof of receipt, with the officer's rank, name and badge number, when you submit the affidavit.
11. Join neighbourhood watches, farm watches and AfriForum initiatives for safety. Make sure you are involved in regional security structures, regardless of the organisation.



Safety first

Remember that your safety always comes first. You should avoid conflict as far as possible. If you become aware of a land invasion, the police, neighbourhood watch, CPF and private security must be notified immediately.

Communication should preferably be done in writing, so that facts cannot be denied later.

Also contact your neighbours, any existing security structures as well as AfriForum. It may be advisable to seek a court interdict before the people move in. Lock all gates on the premises and take pictures of the locks.

Patrol the area and lock all gates that can be locked.

“Eviction” with or without a court order

Any trespasser must be arrested, unless he/she has undisturbed¹ occupation (in terms of the Trespass Act). The owner or the person in charge of property must lodge a complaint with the police.

If the trespasser has undisturbed occupation, he/she may not be evicted from housing without a court order. In other words, only when the intruder has been informed of his/her trespassing and a complaint has been lodged with the police (in terms of the Trespass Act), the structure may be demolished and the trespasser arrested by the police.

If no-one is living in the structure, it must be demolished immediately, before being occupied. Call your nearest neighbourhood watch or security company for assistance and witnessing. Building materials and content should not be damaged, and an inventory of it must also be kept. It would be wise to hand over the inventory to the police (SAP13). It is essential to take photos and videos of the whole process, to later serve as evidence if a dispute arises.²

References:

- Paragraph 6 of the South African Police Services document *Evictions from Farming Land: Operational Guidelines for Members of The South African Police Service*.
- *Mbangi and Others vs Dobsonville City Council 1991(2) SA 330(W)*.

The police

The police are supposed to investigate any crime. In practice, however, they will often refuse to get involved in land invasions, because of the political nature of the crime. Insist on submitting complaints of trespassing and possibly also complaints of damage to property and violations of the Fencing Act. Complaints of public violence may also be a possibility.

Get other people to accompany you to the police station and to be witnesses. Insist on seeing the station commander if the officers are unhelpful. Submit complaints to the Independent Complaints Directorate (ICD) if complaints are not taken or investigated by the police. It is important that you are able to identify the unhelpful officials.

Private person's arresting capability

A private person may carry out arrests if a crime is committed in his presence. It is advisable to immediately call the police, neighbourhood watch and/or security company and to have them available when action is taken. Once again, it must be done in a responsible manner in group context. It is important to do this with as little violence as possible and to hand over the person to the police as soon as possible. It is advisable to have witnesses present at any arrest.

References:

The Criminal Procedure Act, 1977 (Act 51 of 1977)

- Manner and effect of arrest (Section 39)³

1. During the arrest, the person who is being arrested must be touched physically to avoid any confusion about who is being arrested, unless the person voluntarily subjects to arrest.
2. The arrested person must be informed immediately about the reason for the arrest and if a warrant is issued, he must get a copy of it.
3. If these steps were followed, the person is in lawful custody and is to remain in custody until he/she is released legally.

1. *Mbangi and Others vs Dobsonville City Council 1991(2) SA 330(W)*.

2. May also be handled by placing a newspaper advertisement that requests that the property be collected within 21 days, failing which, the owner will dispose of it (similar to when a motor car has been left standing on your premises for a long time). If the value is more than R300 000, an auction must be held.

3. The Criminal Procedure Act (Act 51 of 1977) Section 39, 42 and 49.



■ Arrest by private persons without a warrant (Section 42)

1. Any private person may, without a warrant, arrest any person who:
 - a. in the presence of the arrestor commits a crime or attempts to commit a crime, or for good reason is suspected to have committed a crime, as referred to in Schedule 1;
 - b. apparently had committed a crime, presumably had escaped from lawful custody and is lawfully being pursued by another person;
 - c. committed a crime in terms of a law authorising a private person to perform an arrest for that crime without a warrant (e.g. The Stock Theft Act); and
 - d. was involved in a fight that was witnessed by the arrestor (the Prevention of Public Violence and Intimidation Act).
2. Any private person may pursue any other person as defined in subsection 1(a) above without a warrant and may try to apprehend him. Any third person informed of the reason for the pursuit and arrest, may participate without a warrant.
3. The owner, legal tenant or manager of premises where a crime is committed (Schedule 1), may pursue and arrest the suspect without a warrant. Any third person who was informed about the crime may participate in the pursuit and arrest without a warrant.

■ Use of force (Section 49)

Any person attempting to perform a legal arrest, may use such force as is necessary if the suspect resists, on the following conditions:

1. The suspect should know that you are attempting to arrest him legally.
2. The violence must be immediately necessary to prevent escape and injury.
3. The violence may not be more than what is immediately necessary.
4. You will have to prove that serious immediate danger to yourself or others existed.
5. You will have to prove that you have met all these conditions.

Trespassers who have already taken occupation

If the invaders have already moved in, in other words, if they are enjoying undisturbed occupation, they are still trespassing, which is a crime. In such a case it is unwise to carry out arrests yourself, because the invaders will try to make it a case of eviction without a court order. Pressure must be put on the police to follow up on the complaints that have already been submitted. If invaders have already moved in, an eviction order must be obtained from a court as soon as possible. It is easier to get an eviction in circumstances where the invaders have been on the land for less than 6 months.

Occupation of public land

It is a fact that public land such as parks and cemeteries are occupied. In such circumstances, a member of the public may not break down the structures. The designated route to follow, is to lay charges with the police and the municipality. The municipality must also be notified if the shacks do not comply with building regulations. Action can later be taken against the municipality if they fail to perform their duty. Proactive patrolling of public areas by neighbourhood watches, amongst others, can reduce the likelihood of occupation of public land.

Record-keeping

It is important to keep an accurate record of all incidents:

- Name of incident
- Place
- Time
- Date
- Description of events (telephone calls, radio messages, etc.)
- Photos (correct date and time should ideally appear on it)
- Videos (correct date and time should ideally appear on it).

Conclusion

Property rights are the cornerstone of a stable social, economic and political environment. The increasing threats of land occupation should be taken very seriously. We must develop the ability to protect our own property and the property of other persons and communities. This can be achieved only by acting in a responsible manner as organised communities.



AFFIDAVIT

I, the undersigned

(FULL NAMES)

herewith states under oath that:

1.

I am a male/female of age residing at _____

with ID number _____ and contact number _____

2.

The whole of the facts herein is within my own personal knowledge, unless from the context it appears to be different.

3.

The contents of this affidavit is to the best of my knowledge and belief true and correct.

4.

I am the owner/lawful resident of the land with full property description

5.

On _____ at approximately ____h ____ people unknown to me started moving onto the property known as

6.

The people started removing plant material and commenced with the erection of structures on my property.

7.

This action is unlawful. These people do not have any legal reason to occupy the land or to erect structures on the land.

8.

There are approximately _____ (number) persons. The number increases daily.

9.

These unlawful occupants cause big problems for me and also create a safety risk.

It is important that drastic action is taken by the South African Police Service.

10.

I request herewith that a complaint of unlawful occupation as stated in Section 1(1) of Law 6 of 1959 be lodged and that the matter is further investigated.

11.

I also request that the police ensure that the criminal activity is terminated. Currently, the crime is committed continuously because the people continue to live on my property without any lawful reason to do so.

12.

I confirm that I have not given any of these people permission to access the property and I shall not grant such permission.

DATED AT _____ **ON THE** _____ **DAY OF** _____ **20** _____.

DEPOSITOR

SUBSCRIBED, SWORN TO AND SIGNED AT _____ **ON THE** _____ **DAY OF** _____ **20** _____ **BY THE DEPOSITOR, WHO DEPOSES AND SAYS THAT HE/SHE HAS READ THE FOREGOING AFFIDAVIT SUBSCRIBED BY HIM/HER, AND THAT THE MATTERS STATED HEREIN ARE TRUE TO THE BEST OF HIS/HER INFORMATION, KNOWLEDGE AND BELIEF. HE/SHE REGARDS IT AS BINDING TO HIS/HER CONSCIENCE AFTER COMPLIANCE WITH THE PROVISIONS OF THE GOVERNMENT NOTICE R1258, DATED 21 JULY 1972, AS AMENDED.**

BEFORE ME:

COMMISSIONER OF OATH

NAME: _____ **CAPACITY:** _____ **ADDRESS:** _____