

## A PRACTICAL OVERVIEW OF THE RESIDENTIAL EVICTION PROCESS

### STEP 1

#### LETTER OF DEMAND

- The lease agreement places various obligations on both the Lessor and Lessee.
- Should one of the parties be in breach of such an obligation, a letter of demand must be sent affording the party a certain time period to rectify the breach. This is called placing the Lessor or Lessee *in mora*.
- Where the provisions of the Consumer Protection Act 68 of 2008 (“the CPA”) is not applicable, the terms of the agreement will determine the time period that needs to be afforded to the party to rectify the breach. If no time period is stipulated, 20 business days notice is deemed to be a reasonable time period. Naturally, the circumstances of the breach need to be taken into account.
- If the tenant is in breach and the provisions of the CPA are applicable, a letter of demand must be sent in terms of section 14(2) of that act affording the tenant 20 business days to rectify the breach. (Note that, if the provisions of the CPA apply, a tenant will always be entitled to terminate the lease agreement without any cause of 20 business days notice, which termination may, in specific instances, involve a reasonable cancellation penalty).
- The letter of demand must be served at the *domicilium citandi et executandi* address, as appointed by the defaulting party in terms of the lease agreement (“chosen domicilium address”).

### STEP 2

#### LETTER OF CANCELLATION

- Should the party fail and/or refuse to rectify the breach within the time frames stated in the letter of demand, a letter of cancellation must be served on that party at the chosen domicilium address.
- There are certain requirements which the cancellation letter must contain, the most important being a statement that the lease agreement has now formally been cancelled.
- Should the party in breach be the Lessee, the Lessor must also request the Lessee to vacate the premises within a certain time period. This is usually seven days.

### STEP 3

#### THE EVICTION APPLICATION

- Should the Lessee remain in occupation of the property after the time period referred to in the cancellation letter has lapsed, the Lessor’s attorney will proceed to draft an application for the Lessee’s eviction.
- The Lessor should provide his attorney with the signed lease agreement, an identification document, a copy of the letter of demand and cancellation letter together with proof that both were served at the domicilium address of the Lessee.
- After the application has been drafted, the registered owner or person in charge of the property will need to sign an affidavit in front of a Commissioner of Oaths, which forms part to the application.
- The application is then taken to the Court within which jurisdiction the property is situated for a case number to be allocated and the application to be issued by the Court.

## STEP 4

### SERVICE BY THE SHERIFF OF THE COURT

- The application is then served on the Lessee by the Sheriff of the Court.
- The application will contain a court date on which date the Lessee must appear in Court.

## STEP 5

### THE FIRST COURT APPEARANCE

- At the Lessee's first appearance in Court, the Magistrate will ask the Lessee if the application is going to be opposed or not.
- Should the Lessee indicate that the application will be opposed, the Magistrate will further advise the Lessee of the right to appoint a private attorney or to apply for legal aid.

### IF UNOPPOSED

- Should the Lessee indicate that the application will not be opposed, the application for an eviction order will be granted if the Magistrate (after an investigation into the circumstances of the matter) is of the opinion that it is fair and equitable to do so.
- An order for the eviction of a Lessee in an unopposed matter will in most circumstances not take longer than three months to obtain.

### IF OPPOSED

- Should a Lessee believe that there is a valid defence, such as huur gaat voor koop, to oppose the application, the Court will then postpone the matter until the Lessee has appointed a legal representative.
- Thereafter the Lessee must file his opposing affidavit containing his defence to the application. The matter will then be postponed for trial.
- During the trial, the respective legal representatives will argue their client's cases and the Magistrate will then decide to either grant or refuse the request for an eviction order. The Magistrate is, in terms of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (the PIE Act 19 of 1998), obliged to take certain factors into account before granting such order.
- An opposed eviction application can take up to 12 months before an order is made.

### STEP 5.3. DEED OF SETTLEMENT

- At any time during the opposed or unopposed eviction process, the parties may attempt to settle the matter and incorporate the terms of the settlement into a settlement agreement, which will then be made an order of court.

## STEP 6

### GRANTING THE ORDER

- A Magistrate will only grant an eviction order after considering all the circumstances and if he is of the opinion that it is just and equitable.
- The only way to legally evict a Lessee is by means of a court order. Landlords must not resort to self-help by, for example, changing the locks of the property.

## STEP 7

### GIVING EFFECT TO THE COURT ORDER

- Should the Magistrate consider it to be just and equitable to grant the eviction order, the attorney will in most instances provide a draft order to the Magistrate, to be made final.
- This draft order will contain a reasonable date upon which the Lessee must vacate the property and, should the Lessee fail to vacate the property on said date, the Sheriff will be authorised to remove the Lessee from the premises after a warrant of ejection has been issued by the Clerk of the Court.