

HOMEWORK BEFORE ALLOWING OCCUPATION

Before letting a home or allowing a buyer to take early occupation (while a sale is finalised) it is important to appreciate the risks. One of these risks relates to the legal process should an eviction be necessary in the event of a default.

If a defaulting tenant does not leave willingly it is necessary to obtain:

1. a court order authorising an eviction; and
2. a warrant giving a sheriff legal authority to implement the eviction.

Once in possession of a court order, it is a relatively simple and speedy process to obtain a warrant and send instructions to a sheriff. Once in receipt of a warrant (issued by the court which granted the eviction order) the sheriff will attend the premises and forcefully remove the occupiers if necessary.

The potentially frustrating process relates to obtaining the court order, which is always necessary for the purpose of having the warrant issued. In order to get a court order it is necessary to follow the procedures set out in the Prevention of Illegal Eviction From And Unlawful Occupation of Land Act (PIE).

PIE creates a unique and often drawn out and expensive process to be followed by a landlord in order to obtain a court order, even if a tenant has defaulted on a lease or a sale has fallen through. As a result of the steps set out in PIE, it is possible for a defaulting tenant to delay being evicted for an extended period unless the landlord takes the correct action immediately.

The extent to which the courts will protect the interests of tenants was demonstrated recently when, according to a news source, the High Court in Johannesburg ordered the eviction of a home owner's family from their own home after a defaulting tenant claimed he had been forcibly

removed without a court order. In this case the tenant had been a prospective buyer who was (regrettably for the home owner) given early occupation pending the finalisation of a sale. The sale did not go through and the buyer remained in occupation without paying rent.

Before allowing anyone occupation home owners are advised to ensure proper background checks have been done and if necessary ensure adequate deposits have been received. In the event of a problem it is recommended immediate legal action be taken.

Tenants thinking about using the system to delay voluntarily leaving or an eviction are advised against this. Once a landlord follows the correct procedure, it is generally only a matter of time before an eviction order is granted. The tenant will remain liable for outstanding rentals and may also be liable for a portion of the landlord's legal costs. In addition to this, the event will tarnish the tenant's reputation and make finding alternate accommodation more difficult.

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