TESTING COPY
1 AUGUST 2019

GUIDE TO THE EVICTION PROCESS

THE EVICTION PROCESS

LEGAL ASSISTANCE

RESOURCES AVAILABLE ONLINE

Visit: www.evictions.org.za

Disclaimer:

The information in this Guide is provided for general information purposes only and does not constitute legal or other professional advice. While we have taken every care to ensure that the content is accurate, the content is provided as is and your use of and reliance on the information contained herein is entirely at your own risk. All the information is not intended to stand alone as legal advice. Before making any decision or taking any action you should take appropriate legal advice from a suitably qualified person with regard to your particular circumstances. We accept no responsibility for any loss or damage which may arise from reliance on information contained in this guide.

PLEASE GIVE US YOUR FEEDBACK

User feedback from this test version of the guide is vital to its improvement. Go to evictions.org.za to contribute.

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.

-Section 26(3) of the Constitution

This guide has been designed to provide valuable resources and accurate information to those who are looking to understand the eviction process. Knowledge of your rights as a tenant and the surrounding legislation is key to ensuring that your can effectively oppose your eviction.

For more information please visit:

www.evictions.org.za

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INTRODUCTION

THIS GUIDE & EVICTION

HOW TO USE THIS GUIDE

> This guide will teach you your rights as a tenant and provide tips and actions to help you navigate the eviction process.

STEP 1 — UNDERSTAND WHERE YOU ARE IN THE EVICTION PROCESS

You should first look at the Eviction Process Flow Diagram on page 4. This will give you an overview of the entire process and help you find out where you are.

THE EVICTION PROCESS FLOW DIAGRAM (PAGE 4)

STEP 2 — JUMP TO THE RELEVANT SECTION AND LEARN HOW TO TAKE ACTION

Once you understand where in the process you are, use the Eviction process diagram (page 4) or the contents page to jump to the relevant page to find out more and discover what actions you should take.

STEP 3 — READ INFO BOXES AND USE THE GLOSSARY

If there are any words you don't understand look for definitions in the glossary on page 63. The most important concepts are highlighted in info-boxes. Read these carefully so that you understand the rest of the information. At the end of each section there is a page called "Taking Action". You should do as many of these as possible, as long as they are relevant.

SEEK LEGAL ADVICE

This guide does not replace legal advice or representation. If you are facing an eviction in court you should still get legal representation.

WHAT DOES EVICTION MEAN FOR YOU

Being evicted can be a very traumatic experience. Having to worry about whether or not you and your loved ones will have a roof over their heads tomorrow is an experience that no one should have to endure. **If there is anything you learn from this guide it's this:**

> 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.
>
> -Section 26(3) of the Constitution

1. **This means that you can't be forced to leave your home before the court says you have to.** If you have nowhere to go your landlord cannot kick you out without a court order! If they physically remove you or lock you out of your home they are committing a criminal offense.

2. **To grant an eviction order the court must look at your personal circumstances** and make a decision that is **JUST AND EQUITABLE**. If you are going to be made homeless by your eviction the Municipality must provide you with **EMERGENCY HOUSING**.

JUST & EQUITABLE

Just and equitable means that the decision is fair, not biased, and takes into account all relevant information.

EMERGENCY HOUSING

Emergency Housing provides temporary assistance in the form of access to land and/or shelter (houses) in a range of emergency situations. Currently the only houses provided are zinc shacks.

3 **Remember that just because your landlord has taken you to court does not mean you are definitely going to be evicted**. There are many circumstances where landlords try to evict people unlawfully and this is uncovered by the court. **If you have received papers saying you need to go to court you should immediately** **CONSULT A LAWYER** **for legal advice.** They will tell you if you have a chance of winning your case, and will tell you what your options are.

4 **There is no shame in being evicted. You are not alone!** We are in a housing crisis and landowners are valuing profits over people. Rental prices have become too expensive and this is pushing many people out of neighborhoods they have lived in for over 50 years! Join Reclaim the City in fighting against a property system that is abusing the poor. Become a housing activist and be part of the change that is sweeping through Cape Town, South Africa, and the World. We have had enough, it is time to fight back!

CONSULT A LAWYER

Lawyers can be very expensive. DO NOT WORRY! If you can't afford a lawyer, there are free options such as Legal Aid and Pro Bono lawyers from the Legal Practice Council. This guide will help you find a lawyer who can represent you for free.

HOW TO FIND LEGAL ASSISTANCE (PAGE 36)

> There is no shame in being evicted. You are not alone! We are in a housing crisis and landowners are valuing profits over people.

THE EVICTION PROCESS

IDENTIFY YOUR NEXT STEP

COPY & SHARE

SEE PAGE 7

1 YOU NEED TO RESOLVE A DISPUTE WITH YOUR LANDLORD

If there is a **dispute between you and your landlord**, you can **go to the Rental Housing Tribunal** to have the issue resolved. An example of a dispute is if your landlord refuses to do maintenance on your home. Or they want to increase your rent by more than normal.

ACTION Go to the Rental Housing Tribunal and make a complaint

SEE PAGE 15

2 YOUR LANDLORD GIVES YOU A NOTICE TO VACATE

A Notice to Vacate does NOT mean you have to leave your home. It means that your **landlord has cancelled your lease** and would like you to move out. In order for an eviction to be lawful your landlord must act in accordance with the law (Prevention of Illegal Eviction from and Unlawful Occupation of Land Act).

ACTION Meaningfully engage with your landlord. Try resolve the matter so that you can remain in the property or get more time to move out.

SEE PAGE 23

3 THE SHERIFF DELIVERS PAPERS SAYING YOU ARE BEING EVICTED

When the **Sheriff delivers (serves) the Notice of Motion** it means that your **landlord is going to court to get you evicted**. At this point you still DO NOT have to leave your home. You must still go to court and the magistrate or judge will decide if you are evicted or not. Attached to this Notice will be your landlord's Founding Affidavit, which contain the reasons you are being evicted.

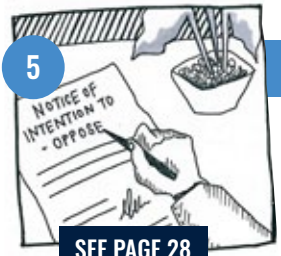
ACTION Ask the Sheriff to explain the documents to you. Read them very carefully and write down important dates and information. Seek legal assistance immediately. Make notes of anything that is not true in your landlord's affidavit.

SEE PAGE 36

4 YOU SEEK LEGAL ASSISTANCE

If you have received court papers you should seek legal assistance as soon as possible. The worst thing you can do at this stage is NOTHING, as this will make it more difficult for you when you go to court. Just because you have received court papers does not necessarily mean you will lose in court and be evicted. Getting good legal advice immediately could save you from homelessness.

ACTION If you cannot afford to hire a lawyer you can go to a pro bono (free) law clinic like Legal Aid or the go to the Legal Practice Council (formerly the Cape Law Society) , who will provide you with a lawyer.



SEE PAGE 28

5 YOU OPPOSE YOUR EVICTION

Opposing your eviction is very important if you do not want to be evicted or would like more time than your landlord is willing to give you. You can oppose your eviction by filing Opposing Papers (called the Notice of Intention to Oppose), or you can oppose in-person in court. Attached to this Notice will be your Opposing Affidavit. This affidavit is your side of the story, and why you think your eviction is unlawful or unjust.

ACTION If you have a lawyer, tell them you want to oppose your eviction and that they must file opposing papers. If you do not have a lawyer you must go to court on the date given in the Notice of Motion (step 3) and tell the court you are opposing your eviction and that you need a postponement in order to find legal representation.

SEE PAGE 41

6 THE CITY OF CAPE TOWN (MUNICIPALITY) FILES ITS REPORT

The Municipality has an obligation to house anyone who will be made homeless by an eviction. They should do an investigation in to your circumstances and if you qualify they will offer you emergency accommodation.

ACTION First make sure the City has submitted its report to the court. If not the matter cannot continue until they have. Once submitted you should read the report carefully. If the place they want to move you to is too far away or would have a big (negative) effect on your life you should object.

YOUR LANDLORD FILES A REPLYING AFFIDAVIT

A Replying Affidavit is an opportunity for your landlord to reply to what you put in your Opposing Affidavit. They may disagree with the facts you have set out in your affidavit and will challenge them in their replying affidavit.

ACTION Read this affidavit carefully. If you do not agree with anything in it you should tell your lawyer and try to find evidence showing that what they are saying is not true or accurate.

YOU OR YOUR LAWYER ARGUE YOUR CASE IN COURT

Argument in court usually does not happen the first time you go to court. Once both sides are ready to argue you will go to court again and argue your case based on the affidavits you have already submitted. It is very important that all relevant information goes into your affidavit, as the court will base their decision on this and will not allow new information in court.

ACTION Even though you have a layer, you should still go to court. You must listen to everything your lawyer and your landlord's lawyer say in court. Any agreement that your legal representative makes will be binding on you, so you must demand to know what is going on at all times.

YOU RECEIVE A COURT ORDER

A Court Order is the official decision by a magistrate/judge and is legally binding. In an eviction the Court Order must be communicated to you in a document given to you by the Sheriff. The court order will say whether or not you are evicted and what date you have to vacate the property.

ACTION If you are not evicted you carry on living in your current property. If you are evicted you need to note the date you need to vacate by and make plans to move out by then. If you think the magistrate made a mistake you can appeal the decision. You should get legal advice before you make an appeal.

SECTION 1

THE RENTAL HOUSING TRIBUNAL

RESOLVING DISPUTES WITH YOUR LANDLORD

> Settling disputes at the RHT is a free process that does not require a lawyer and is usually much quicker than going to court.

1. Sometimes disputes between tenants and landlords cannot be resolved through meaningful engagement (See page 20).
2. In such cases the **RENTAL HOUSING TRIBUNAL** (RHT) investigates and tries to resolve the issues.
3. Having your dispute heard is free and does not require a lawyer, although you can have one present if you want.
4. A decision by the RHT carries as much weight as a **COURT ORDER**, but the process is usually quicker.

COURT ORDER

Is an official order that has been written by the judge/magistrate of the court and must to be obeyed. A court order authorises the carrying out of certain steps by one or more parties. E.g. If you are evicted you must leave the property by a certain date. Consequences for failing to comply with a court order (acting in contempt of a court order) can include criminal sanctions (e.g. fines or jail time) and in the case of an eviction order, a sheriff (possibly with the assistance of SAPS) can use appropriate force to physically remove you from the property.

IMPORTANT TRIBUNAL RESTRICTIONS

1 If your landlord has **started eviction proceedings** against you (you have received a document saying you have to go to court) or if your lease has already expired or been terminated then you **cannot go to** the **Rental Housing Tribunal**.

2 If you have **already made a complaint** at the **Rental Housing Tribunal** your landlord **cannot start eviction proceedings** in court against you for **three months** or until the Tribunal has **made a decision** on your matter.

CONTACTING THE TRIBUNAL

> When meaningful engagement is unable to resolve a dispute, you should contact the Tribunal.

Anyone can contact or approach the RHT at any time for enquiries or general information regarding their rights and duties as a tenant or landlord.

Once you have decided what category your complaint falls under and filled out the relevant forms (see page 9), you should visit their offices in person to submit your complaint and ask any questions you may have about the process.

RENTAL HOUSING TRIBUNAL

The RHT is a decision-making body comprising of five members appointed by Government, who each have expertise in Housing. These members are independent and do not work for the housing department.

CONTACT THE RHT TODAY!

Rental Housing Tribunal Office:

Address:
Department of Housing
Ground Floor
27 Wale Street
Cape Town City Centre

Telephone: 0860 106 166
Please call me: 079 769 1207
SMS: "Help" to 31022
Email: rht.enquiries@westerncape.gov.za
Hours: Mon–Fri, 7:30AM–3PM

TRIBUNAL COMPLAINTS

IS MY COMPLAINT VALID?

COPY & SHARE

> If your dispute is listed below, you have grounds to lay a complaint at the Tribunal.

1. **Identify all the forms** that are **relevant to issues** you are **having with your landlord**. **Download** them or ask for them at the **Tribunal office**.
2. **Submit forms** to the **Tribunal office**.
3. For **urgent matters** you may need to get a **Spoliation Order** (coming soon).

FAILURE TO REFUND DEPOSIT

FORM A

Your landlord has not returned your deposit after you've left the property.

EXORBITANT INCREASE IN RENTAL

FORM C

Your landlord has increased the rent more than usual or by an unaffordably high amount.

MUNICIPAL SERVICES NOT PROVIDED

URGENT!

FORM E

Your landlord has failed to provide municipal services (e.g. water; refuse and sewerage.

UNLAWFUL NOTICE TO VACATE

FORM B

The Notice to Vacate you received is unlawful (See page 10 on unlawful Notices to Vacate)

FAILURE TO ACCEPT YOUR NOTICE

FORM D

Your landlord doesn't accept that you have decided to leave after giving them your notice and wants you to stay and keep paying rent.

MUNICIPAL SERVICES NOT PAID

FORM F

If you (the tenant) are supposed to pay for municipal services but have not, your landlord will make a complaint against you using this form.

FIND ALL FORMS ONLINE www.evictions.org.za/complaint-forms

FAILURE TO DO MAINTENANCE

FORM G

Your landlord is failing to do proper and required maintenance on your home.

UNILATERAL CHANGES TO AGREEMENT

FORM I

Your landlord has made changes to the lease without your agreement or consent.

UNLAWFUL SEIZURE OF POSSESSIONS

FORM K

Your landlord takes your things from the property or takes things from the property that belong to him but you have a right to use.

FAILURE TO PROVIDE COPY OF LEASE

FORM M

Your landlord refuses to give you a copy of the lease.

CLAIM FOR LOWERING OF RENTAL

FORM O

You think your current rental amount is too high and unfair you can ask for it to be reduced.

UNLAWFUL EVICTION OR LOCKOUT

URGENT!

FORM H

Your landlord has unlawfully evicted you or changed the locks so you can't get into the house.

UNLAWFUL ENTRY

FORM J

Your landlord comes into your home without proper notice, or when you are not at home.

FAILURE TO PROVIDE PAYMENT RECEIPTS

FORM L

Your landlord refuses to provide you with monthly statements or receipts for payment of rental after you have asked for them.

FAILURE TO PROVIDE A WRITTEN LEASE

FORM N

You have a verbal lease your landlord has a duty to turn it in to a written lease if you ask them.

OTHER COMPLAINTS

FORM P

You have any other dispute that is not on this list but you think it is important.

THE TRIBUNAL PROCESS

A STEP-BY-STEP GUIDE

COPY & SHARE

STEP 1 IDENTIFY YOUR COMPLAINTS

Use the list of **Tribunal Complaints** (see page 9) to check if your **complaint is valid**. If you are **unsure** about whether you have a valid complaint, **submit it anyway! The Tribunal will tell you if it is valid or not.**

STEP 2 FILL IN RELEVANT FORMS

When going to the Tribunal with a complaint, you must always **fill in** the **Main Complaint form**. That form must then be **accompanied** by the **specific complaint forms** related to your **situation**.

ALWAYS KEEP RECORDS

Write down a history of your landlord's unfair practices and include as much detail as possible:

- Names of the people involved
- Dates when you had discussions with people
- Where you had those discussions
- What was said
- You can also take photos of your house to show that the landlord has not done maintenance.

INFO AND DOCUMENTS YOU NEED TO MAKE A COMPLAINT AT THE RHT

- OFFICIAL ID / PERMIT
- YOUR CONTACT DETAILS
- LANDLORD'S CONTACT DETAILS
- COPIES OF LEASE (IF THERE IS ONE)
- SUPPORTING EVIDENCE (PHOTOS, PAYMENT RECEIPTS ETC.)

EXAMPLE SCENARIO

Your **landlord entered your house without asking** and has **not fixed** a **hole in your ceiling**.

= MAIN FORM (ALWAYS REQUIRED) + FORM J (UNLAWFUL ENTRY) + FORM G (MAINTENANCE)

MAKING COPIES OF FORMS

You should have three copies of all important documents: two for the RHT and one for you (you keep the originals).

STEP 3 SUBMIT YOUR DOCUMENTS

Complaint forms, as well as any other relevant **supporting documentation**, need to be delivered, **in person**, to the **Rental Housing Tribunal** (see page 8 for contact information).

STEPS TO TAKE WHEN SUBMITTING DOCUMENTS

1. MAKE 2 CERTIFIED COPIES OF ALL DOCUMENTS
2. SUBMIT 2 COPIES OF ALL DOCUMENTS TO THE TRIBUNAL
3. RECORD THE DATE OF SUBMISSION ON THE ORIGINAL FORMS (THE COPY YOU KEEP)
4. RECORD THE STAFF MEMBER'S NAME YOU SUBMITTED TO, ON THE ORIGINAL FORMS
5. GET WRITTEN CONFIRMATION OF YOUR SUBMISSION FROM THE TRIBUNAL (COULD BE A STAMP)
6. KEEP ALL ORIGINAL DOCUMENTS SAFE

HOW TO CERTIFY

Take copied documents along with the originals, to a police station, a bank, a post office or a lawyer to have them certified free of charge.

YOU MUST HAVE THIS INFORMATION BEFORE YOU SUBMIT

STEP 4 THE RHT RECORDS YOUR COMPLAINTS

After Tribunal staff receive your complaint they open a file and give it a **case reference number**. This is a number that will be used to **track your complaint**. About two weeks later, you and your landlord should **receive a letter** from the Tribunal saying that your **complaint has been received**, and should include your case reference number.

FOLLOW UP WITH YOUR COMPLAINT

You should get a phone call from a Tribunal staff member. If they call, ask them for their name and for your case reference number. Ask if they have sent the letter and ask for the contact details of the case officer assigned to your matter. If you do not hear anything after two weeks, call the Rental Housing Tribunal to follow-up. Keep following up regularly!

FIND ALL FORMS ONLINE www.evictions.org.za/complaint-forms

STEP 5 TRIBUNAL STAFF INVESTIGATE YOUR COMPLAINTS

Tribunal staff check whether your complaint **qualifies** as an **unfair practice**. This check is called a **preliminary investigation**. If they think they need more details, they can ask for more information from you or your landlord to help them understand the complaint. Tribunal staff can also get an inspector to **inspect the property**. If you think it is necessary you must ask that they come and do an inspection.

STEP 6 TRIBUNAL STAFF DECIDE WHETHER A VALID DISPUTE EXISTS

After the investigation, the Tribunal staff decide whether or not the **complaint qualifies** as an **unfair practice**. After you submit the complaint, they then have **30 days to make a decision**. If they do not think your complaint involves an **unfair practice**, they must send a letter to let you know and give reasons. If the Tribunal staff think that an unfair practice may be **involved**, they will continue to **try solve the dispute**, and must let you know about what is decided.

STEP 7 RESOLVING YOUR DISPUTE WITH THE TRIBUNAL

A **case officer** is **appointed** to your case. This case officer is supposed to contact you and the landlord. The case officer might first **try to resolve the matter** by **calling you** and **your landlord** to **discuss** and find a **solution** that **suits both parties**. If the matter **cannot be resolved** then the case officer decides whether the dispute can be resolved through **MEDIATION**, or whether a **TRIBUNAL HEARING** is required.

MEDIATION

A meeting where both sides try to come to an agreement after discussing the problem, with the help of a neutral person, in this case, from the Tribunal.

TRIBUNAL HEARING

Both parties share the facts of their dispute to members of the Tribunal board and the board then makes a ruling based on these facts and the circumstances of the case.

STEP 8 ATTENDING MEDIATION

The **mediator listens** to **both parties** and **asks questions** to help them **come to an agreement**. If you come to an agreement, you **sign the agreement** and both parties do what was agreed to. This **mediated agreement is binding**. It has the **same power as a court order**. If you do not come to an agreement, the next step is to have a hearing.

REQUEST A TRANSLATOR

If you require a translator or have a disability, ask your case officer to arrange a translator or make special arrangements for your disability during your mediation or Tribunal hearing.

STEP 9 ATTENDING A TRIBUNAL HEARING

If mediation fails, you will be given a hearing date by your case officer. The hearing will be held at the Tribunal office (see page 8).

In the hearing, each party is asked to share the facts of their case. At least **three Tribunal members** will be **present** at the hearing. They ask the parties questions, and may ask for documents to prove your case. It is not as formal as a court, and you **do not need to have lawyers** or legal representation. However, in some cases it helps to have a lawyer.

After hearing both sides, the Tribunal members make a ruling. The ruling is communicated to the parties a few days after the Hearing. The ruling has the same power as a ruling by a Magistrates' Court. If you or the landlord would like to challenge the decision, you have to go to the High Court as soon as possible.

STEP 10 HIGH COURT REVIEW

If one of the parties is not happy with the conclusion reached by the end of this process, they may have the decision reviewed by the High Court.

CONTACT THE HIGH COURT (PAGE 47)

REPORT UNFAIR TREATMENT

If you feel that your complaint has not been dealt with correctly or they closed your case incorrectly, you can report this to Nathan Adriaanse, the Director of Communication and Stakeholder Relations at the Department of Human Settlements. You can also report staff who treat you disrespectfully or unfairly.

CONTACT NATHAN ADRIAANSE

Email: Nathan.Adriaanse@westerncape.gov.za
Tel: +27 (0) 21 483 2868

SECTION 2

RECEIVING A NOTICE TO VACATE

WHAT DOES IT MEAN TO RECEIVE A NOTICE TO VACATE

> If you receive a letter from your landlord telling you to leave your home, this does not mean you are evicted. You cannot be evicted without an order of court!

1. Receiving **NOTICE TO VACATE** does not mean you must leave your home.
2. You can still engage with your landlord to resolve any issues between you (outstanding rent etc.).
3. If you cannot resolve these issues, you may need to go to court.
4. Going to court can be expensive and time-consuming. It is always recommended to settle any disputes without going to court.

NOTICE TO VACATE

EXAMPLE ON PAGE 18

A conversation, letter, email, SMS or Whatsapp message from your landlord, or their lawyer, in which they state that they have **cancelled your lease** and that you **must vacate the property** by a certain date.

ALWAYS KEEP A PAPER TRAIL

Always keep a record of all your documents and conversations with your landlord. Write down the date and details of the conversation so that you always have proof it happened.

WHEN CAN A LANDLORD SEND A NOTICE TO VACATE

> If you breach the conditions of your lease your landlord is entitled to cancel it.

1. The Notice to Vacate is the landlords way of canceling your lease and telling you they want you to leave by a certain date.
2. Breaching of the conditions of your lease may include: **not paying your rent, intentionally causing serious damage to the property, using illegal substances on the property, or using the property for non-residential purposes.**

SIGNS OF AN UNLAWFUL NOTICE

> If any of the following points apply to your Notice to Vacate, you have grounds to challenge it.

1. Many notices to vacate are unfair or unlawful.
2. If you feel the notice your landlord gave you was unfair, you should point it out to them.
3. If your Notice to Vacate is unfair or unlawful, you should take it to the Rental Housing Tribunal and fill in the relevant complaint form (see page 9).

1 INSUFFICIENT NOTICE

If the Notice to Vacate gives you less than a month (30 days) to leave the property.

2 BREACH OF TERMS OF LEASE

If the Notice to Vacate gives you less time to leave than what was agreed in your lease.

3 SUDDEN TERMINATION OF LEASE

If the landlord suddenly ends/cancels your lease without an explanation and if you feel you have done nothing wrong.

4 NOTICE DUE TO CONFLICT

If the landlord suddenly gives you a Notice to Vacate after you had a disagreement, or if you raised a complaint against them.

5 UNTRUE STATEMENTS IN NOTICE

If the Notice to Vacate says something that is untrue or is not representative of the facts.

6 UNFAIR PRACTICE

If the Notice to Vacate constitutes an unfair practice.

THESE DOCUMENTS ARE EXAMPLES ONLY. THEY ARE NOT BASED ON REAL EVENTS OR PEOPLE.

NOTICE TO VACATE

*BEFORE a landlord/landowner starts the court process to evict you they often send you a letter to CANCEL your lease and ASK you to LEAVE your home. This letter is called a **NOTICE TO VACATE.** It is not a court order!*

ANGELA ***ATTORNEYS AND CONVEYANCERS***

111 Granger Drive
PO BOX 1000
Cape Town 8000

Karen Thomas
21 Chapel Street
Woodstock
Cape Town

YOUR NAME

4 June 2017

Dear Madam

Re: Lease Agreement 21 Chapel Street, Woodstock
ERF 31343 Cape Town

We represent your landlord Big Properties (our client) registered as the owner of the abovementioned property and take our instructions from the same.

Our instructions herein are that you currently live on the premises without a written lease agreement, and as such your verbal lease agreement is on a month-to-month basis.

It is our further instruction to inform you that our client has elected to cancel your lease on the property. Our client has chosen to redevelop the property, and requires that you vacate as soon as possible. This letter serves as your one month's notice and you are required to vacate the property.

CANCELLATION OF LEASE

We hereby give you one month's written notice to vacate the premises by the 31st July 2017.

THIS IS YOUR NOTICE PERIOD
The date your landlord wants you out of the property.

Should you have any queries please do not hesitate to contact the writer thereof.

Yours faithfully,
Shahied Davids
Attorney
Angela Attorneys & Conveyancers
Tel: (021) 013 5096 E-mail: Contact@angelaattorneys.org.za

YOUR LANDLORD OR THEIR LAWYERS DETAILS

NOTE Unlike the formal legal documents, the Notice to Vacate can vary depending who wrote it. In other words they won't all look like this one.

RECEIVING A NOTICE TO VACATE

TAKING ACTION

TASK TO COMPLETE	PAGE	DONE

1 CHECK THAT YOUR NOTICE TO VACATE IS LAWFUL — 16 — ☐

Receiving a Notice of Vacate does not mean you are evicted! Use this guide to check that your Notice to Vacate is lawful. This is a good time to attend an Advise Assembly (see page 61).

IF NOTICE TO VACATE IS LAWFUL

Proceed to step 2.

IF NOTICE TO VACATE IS UNLAWFUL

Challenge your Notice to Vacate at the rental housing Tribunal (see page 7).

2 SET UP A MEETING WITH YOUR LANDLORD — 20 — ☐

Use email, SMS, Whatsapp, a phone call or a face-to-face conversation to set up a meeting between you and your landlord to discuss your Notice to Vacate.

IF YOU LANDLORD AGREES TO MEET

Keep a record and proceed to step 3.

IF YOU LANDLORD WON'T MEET

Keep records of any attempts to engage. This will serve as evidence to strengthen your case if it ends up going to court.

3 MEET YOUR LANDLORD AND TRY TO RESOLVE ISSUES — 21 — ☐

Engage meaningfully with your landlord and highlight the particular details of your situation. If there are issues like outstanding rent or property damage, use this time to resolve them.

IF YOU RESOLVE ISSUES

Congratulations, you can continue living in your home! Keep a record of the terms of your new agreement for future reference.

IF YOU CAN'T RESOLVE ISSUES

If you cannot resolve the issues, you can either engage with your landlord and negotiate a suitable timeline to vacate **OR** seek legal advice and await the delivery of a Notice of Motion by a sheriff (page 23).

SECTION 3

ENGAGING WITH YOUR LANDLORD

WHY IS MEANINGFUL ENGAGEMENT IMPORTANT?

> Resolving issues with your landlord before they escalate to the point of eviction, is always the best way to avoid any legal action.

1. **ENGAGING MEANINGFULLY** with your **landlord** around **important issues** as they arise is always the **best** way to avoid eviction.
2. If you receive a **Notice to Vacate** and **cannot resolve** the issues through meaningful engagement it is likely to become a **legal process**.
3. **Going to court** to dispute an eviction is a **time consuming**, **emotional** and **expensive** process. It is advisable to settle issues out of court, but only if you are certain that you can stick to what has been agreed.

MEANINGFUL ENGAGEMENT

Meaningful engagement is not a legal process. It means that both parties sit down and honestly try to resolve the issues that led to you receiving notice. If your landlord meets with you but does not properly listen or entertain your suggestions, they are not engaging meaningfully.

KEEP RECORDS OF ENGAGEMENT

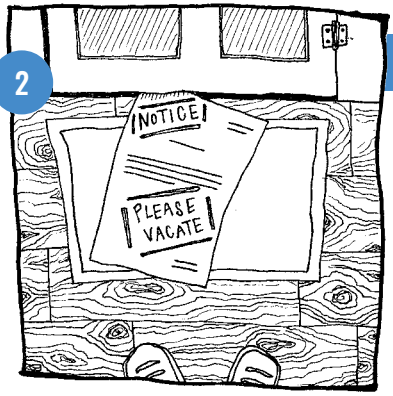
It is helpful to have proof that you attempted to resolve these issues with your landlord and that they were the ones who didn't want to engage. Keep records of ALL communication between yourself and your landlord.

AN EXAMPLE OF MEANINGFUL ENGAGEMENT

1

AN ISSUE ARISES BETWEEN TENANT AND LANDLORD

Angela Khumalo is in arrears because she has not paid her rent. Two weeks ago her landlord sent her a letter demanding that she pay her rent or he will cancel the lease. She should have engaged her landlord at this point, but was too scared.



2

THE LANDLORD THREATENS TO CANCEL THE LEASE

Angela receives another letter under her door saying that her lease is cancelled and that she needs to leave the property by the end of the next month.

RECEIVING A NOTICE TO VACATE (SEE PAGE 15)

3

TENANT MEANINGFULLY ENGAGES WITH LANDLORD

Angela overcomes her fears and schedules a meeting to meaningfully engage with her landlord to resolve the payment problems she has been having. She arranges to pay her outstanding rent and as a result her landlord reinstates her lease and she is able to continue living in the property.

ENGAGING WITH YOUR LANDLORD

TAKING ACTION

TASK TO COMPLETE	DONE

1 CONTACT YOUR LANDLORD AND ARRANGE A MEETING

As soon as a problem arises, you should contact your landlord by telephone and arrange a time and place to meet. You should also send them an email, SMS or Whatsapp message. This is important because this message can be saved as proof of attempted engagement.

2 PREPARE YOURSELF

In order to negotiate you need to know the law and your rights. Read the rest of this guide and, if possible, attend a Reclaim the City Advice Assembly (see page 61) to prepare yourself for the meeting with your landlord.

3 TAKE SOMEONE WITH YOU

Engaging with your landlord can be stressful. If possible, take someone with your for support. This person can also be a witness to any statements made by your landlord.

4 DON'T LET YOURSELF BE BULLIED

With knowledge and support, you are less likely to be bullied. If you are bullied, explain that you know your rights and that what they are doing is unlawful and can be used against them in court or at the Rental Housing Tribunal (see page 7).

5 RECORD THE OUTCOME

Keep a record of any documents from, or conversations with, your landlord. Write down the date and details of any conversations as proof that they happened.

6 TAKE FURTHER ACTION IF AN AGREEMENT CANNOT BE REACHED

If a solution that suits both you and your landlord is not reached, you should approach the Rental Housing Tribunal (page 7) and seek legal advice (see page 36).

SECTION 4

RESPONDING TO LEGAL DOCUMENTS

RECEIVING & RESPONDING TO A NOTICE OF MOTION

> Once you receive a notice of motion, the legal process has begun. You need to act immediately and seek legal advice and assistance.

1. A **NOTICE OF MOTION** will be **delivered** and **explained** to you by the **Sheriff**. You will be asked to sign and **confirm** you have received and understand the notice.
2. A **FOUNDING AFFIDAVIT** will also be **delivered and should be attached to the Notice of Motion**.
3. You should **seek legal advice** immediately (see page 36).
4. **For free advice and support** on how to proceed from here, attend the Reclaim the City **Advice Assembly** (see page 61).

NOTICE OF MOTION

EXAMPLE ON PAGE 25

This document notifies you that your landlord is going to court to get you evicted. It does not mean you have to leave your home. You can oppose your eviction.

FOUNDING AFFIDAVIT

EXAMPLE ON PAGE 26

A document delivered along with the Notice of Motion that contains the reasons (grounds) your landlord has given for your eviction as well as the facts they will be relying on.

WHAT IS A NOTICE OF MOTION

> A notice of motion is a document that outlines the details of your legal proceedings. It is important that you understand these details and respond correctly.

1 **These details include:**

- **What court** you must appear in
- The **date** of your hearing
- The **date** by which you need to file **OPPOSING PAPERS**.
- By **when** and to **whom** you must **submit** your **opposing papers**.

2 **You must go** to court on the **date specified**. If you **fail to appear** in court, the judge can **rule against** you **in your absence**. This is known as a **default judgement**.

OPPOSING PAPERS

EXAMPLE ON PAGE 31

Opposing papers are the documents you must submit to the court to say that you are opposing your eviction. Opposing papers consist of a Notice of Intention to Oppose and your Opposing Affidavit.

GOLDEN RULE: YOU CANNOT BE EVICTED WITHOUT A COURT ORDER

Remember, a lawful eviction can only be ordered by the court. This means you cannot be forced to vacate (move out) until there has been a fair and proper court process.

ATTEND AN ADVICE ASSEMBLY

Reclaim the City holds a weekly Advice Assembly in various locations around Cape Town. This is a place for people who are facing eviction to gather, share, and get advice and support from legal professionals and other tenants who have gone through an eviction before. (See page 61)

HOW TO FIND LEGAL ASSISTANCE (PAGE 36)

THESE DOCUMENTS ARE EXAMPLES ONLY. THEY ARE NOT BASED ON REAL EVENTS OR PEOPLE.

NOTICE OF MOTION

*Legal proceedings to evict you officially start when you receive a **NOTICE OF MOTION.** The Notice of Motion is the first legal document that the landlord or her/his legal representative will give to you. It represents the beginning of an **EVICTION APPLICATION** in the court.*

IN THE MAGISTRATES COURT FOR THE DISTRICT OF CAPE TOWN
HELD AT CAPE TOWN COURT YOU NEED TO BE IN

CASE NO : 5847 / 2016

In the matter between:

BIG PROPERTIES APPLICANT (YOUR LANDLORD) Applicant
(Registration Number: 2010/0054896/07)

and

KAREN THOMAS THE RESPONDENT(S) This is you and anyone else living in the property. Their names will only be mentioned if they are over 18 years of age. First Respondent
And all those holding under her and / or any other persons(s) who also occupy the premises *vis-à-vis* the Respondent

CITY OF CAPE TOWN THE MUNICIPALITY IF THEY ARE CITED If they are not here then you must tell your lawyer and the court they should be cited. Second Respondent

---

NOTICE OF MOTION TYPE OF DOCUMENT

TAKE NOTICE THAT that Big Properties, (hereinafter called the Applicant) hereby makes an application to this honourable court for an order in terms of S4(1) of the Prevention of Illegal and Unlawful Occupation of Land Act 19 of 1998, evicting the First Respondent and all those who hold title under them from the property known as Helium Heights.

BODY OF DOCUMENT
Explains what the Notice is about. I.e. an evictions, details of the property, who the occupiers are, and the law they will be relying on.

THESE DOCUMENTS ARE EXAMPLES ONLY. THEY ARE NOT BASED ON REAL EVENTS OR PEOPLE.

FOUNDING AFFIDAVIT

*The **FOUNDING AFFIDAVIT** is attached to the NOTICE OF MOTION. It is a statement from the landlord or person in charge. It explains why you are being evicted. It is their side of the story.*

IN THE MAGISTRATES COURT FOR THE DISTRICT OF CAPE TOWN
HELD AT CAPE TOWN

COURT YOU NEED TO BE IN

CASE NO : 5847 / 2016

In the matter between:

BIG PROPERTIES — Applicant

APPLICANT (YOUR LANDLORD)

(Registration Number: 2010/0054896/07)

and

THE RESPONDENT(S)
This is you and anyone else living in the property. Their names will only be mentioned if they are over 18 years of age.

KAREN THOMAS — First Respondent

And all those holding under her and / or any other persons(s) who also occupy the premises *vis-à-vis* the Respondent

CITY OF CAPE TOWN — Second Respondent

THE MUNICIPALITY IF THEY ARE CITED
If they are not here then you must tell your lawyer and the court they should be cited.

FOUNDING AFFIDAVIT

TYPE OF DOCUMENT

I, the undersigned,

PETRONELLA ISAACS

do hereby make oath and say:

BODY OF DOCUMENT
Contains facts the landlord will be relying on, reasons given for evicting you as well as their personal circumstances and how your occupation is affecting them.

RESPONDING TO LEGAL DOCUMENTS

TAKING ACTION

TASK TO COMPLETE	PAGE	DONE
1 ASK THE SHERIFF TO EXPLAIN ALL DOCUMENTS	**23**	☐
The sheriff of the court will deliver your Notice of Motion and Founding affidavit to your home personally. It is important that you ask the sheriff to explain all documents to you fully. Do not sign until you know exactly what you are signing.		
2 FIND LEGAL REPRESENTATION OR ADVICE	**36**	☐
It is important that you seek legal advice or representation immediately (see page 36). Once you receive your Notice of Motion, it means legal proceedings have officially begun.		
3 GO TO COURT	**47**	☐
If you do not appear in court on the day of your hearing, you will be evicted! Whether or not you have found a lawyer, you must go to court and oppose your eviction.		
4 REQUEST A POSTPONEMENT TO FIND LEGAL REPRESENTATION	**44**	☐
Legal representation is a right of every South African. If you do not have a lawyer, you must request a postponement from the judge in order for you to find legal representation. You should also show the court proof that you have attempted to find legal representation.		
5 GO TO ADVICE ASSEMBLY	**61**	☐
Knowledge is key to understanding and navigating the eviction process. Go to the Reclaim the City Advice Assembly to learn more about what to do after you have received a Notice of Motion (see page 23).		

SECTION 5

HOW TO OPPOSE YOUR EVICTION

THE IMPORTANCE OF OPPOSING

> If you do not oppose your eviction, the court will have no choice but to evict you! It is important that the judge hears both sides of the story.

1. If you are facing eviction and you have nowhere else to live, you must oppose your eviction by appearing in court.
2. If you do not appear in court, there will be no opposition to the Eviction Application and the court will have no choice but to grant the eviction.
3. Even if you don't think you'll win (E.g. you haven't been paying rent), you can still go to court and ask them to give you more time to move out. This is very common.

! YOUR RIGHT TO EMERGENCY HOUSING

If you are going to be made homeless by an eviction you need to contact the City of Cape Town housing department as soon as possible and ask them to provide emergency alternative accommodation for you.

! DON'T MISS YOUR COURT HEARING!

If you do not go to court on the date of your hearing **YOU MAY BE EVICTED!**

SEE PAGE 41 FOR HOUSING DEPARTMENT DETAILS

VALID REASONS TO OPPOSE YOUR EVICTION

1 NO GROUNDS FOR EVICTION

You believe your landlord does not have the grounds (proper reasons) to evict you and that your eviction is UNLAWFUL.

2 PERSONAL CIRCUMSTANCES

You believe your eviction is LAWFUL, but because of your personal circumstances, you need more time to move out.

3 NO ALTERNATIVE HOUSING

You believe your eviction is LAWFUL, but you have nowhere to go if you are evicted and the Government needs to provide you with Emergency Alternative Accommodation.

EXAMPLES OF NOTICE TO OPPOSE (PAGE 31)

OPPOSING WHEN YOU RECEIVE YOUR NOTICE

> If any of the reasons above apply to you, then you should oppose your eviction as soon as possible.

1. **Get a lawyer** and tell them you want to **oppose your eviction**.
2. Your lawyer will **draw up legal papers** and **file them** at **court**.
3. They will **submit** a **Notice of Intention to Oppose** (see page 31). This means you are **officially opposing** your **eviction**.

OR You can draw up and file your own Notice of Intention to Oppose with the court. **THIS IS NOT ADVISED.**

HOW TO FIND LEGAL ASSISTANCE (PAGE 36)

OPPOSING WITH LIMITED TIME OR WHEN IN COURT

> If there isn't time to find a lawyer to write and file your legal papers, or you are already in court, then you can oppose your eviction in person in court on the date of your hearing.

FIRST APPEARANCE: OPPOSING & POSTPONING (PAGE 50)

1 DO NOT MISS YOUR COURT DATE

Ensure you appear in the correct courtroom on the correct date and time. If you fail to appear, **YOU MAY BE EVICTED!**

2 WAIT TO BE CALLED

Sit and wait quietly in the back of the courtroom until your case is called and you are asked to approach the witness box.

3 ASK FOR A POSTPONEMENT

When called to the witness box, tell the judge that you are opposing your eviction and that you need a postponement to find legal representation.

! LIABILITY FOR LEGAL COSTS

If you oppose your eviction and you lose you may have to PAY THE LEGAL COSTS of your landlord. However, the court is unlikely to order costs against a tenant who does not earn a lot of money and has a good reason for opposing their eviction.

! YOUR RIGHT TO A LAWYER

In civil matters (such as evictions) the state is NOT obligated to provide you with a lawyer. However, in practice the court will allow a certain amount of time for those who cannot afford to pay for lawyer to get a free legal representation from Legal Aid or elsewhere.

THESE DOCUMENTS ARE EXAMPLES ONLY. THEY ARE NOT BASED ON REAL EVENTS OR PEOPLE.

NOTICE OF INTENTION TO OPPOSE

*The **NOTICE OF INTENTION TO OPPOSE** is a very important document. It makes it clear to the court that you do not want to be evicted and are challenging the eviction. You or your lawyers give these documents to the landlord and their lawyers.*

IN THE MAGISTRATES COURT FOR THE DISTRICT OF CAPE TOWN
HELD AT CAPE TOWN

COURT YOU NEED TO BE IN

CASE NO : 5847 / 2016

In the matter between:

BIG PROPERTIES — Applicant
(Registration Number: 2010/0054896/07)

APPLICANT (YOUR LANDLORD)

and

KAREN THOMAS — First Respondent

THE RESPONDENT(S)
This is you and anyone else living in the property. Their names will only be mentioned if they are over 18 years of age.

And all those holding under her and / or any other persons(s) who also occupy the premises *vis-à-vis* the Respondent

CITY OF CAPE TOWN — Second Respondent

THE MUNICIPALITY IF THEY ARE CITED
If they are not here then you must tell your lawyer and the court they should be cited.

NOTICE OF INTENTION TO OPPOSE

TYPE OF DOCUMENT

TAKE NOTICE THAT the First Respondent hereby gives notice of its intention to oppose the relief sought by the Applicant in these proceedings.

BODY OF DOCUMENT
Formally informs the court you are opposing your eviction

THE OPPOSING AFFIDAVIT

*The **OPPOSING AFFIDAVIT** is the document where you reply to the things the landlord said against you in the NOTICE OF MOTION**. It is your side of the story**. It explains why you are challenging the eviction. This document is signed by you as the occupier. It is given to your landlord and their lawyers.*

IN THE MAGISTRATES COURT FOR THE DISTRICT OF CAPE TOWN
HELD AT CAPE TOWN ◀ **COURT YOU NEED TO BE IN**

CASE NO : 5847 / 2016

In the matter between:

BIG PROPERTIES ◀ **APPLICANT (YOUR LANDLORD)** Applicant
(Registration Number: 2010/0054896/07)

and

KAREN THOMAS ◀ **THE RESPONDENT(S)**
This is you and anyone else living in the property. Their names will only be mentioned if they are over 18 years of age.
First Respondent
And all those holding under her and / or any other persons(s) who also occupy the premises *vis-à-vis* the Respondent

CITY OF CAPE TOWN ◀ **THE MUNICIPALITY IF THEY ARE CITED**
If they are not here then you must tell your lawyer and the court they should be cited.
Second Respondent

OPPOSING AFFIDAVIT ◀ **TYPE OF DOCUMENT**

I, the undersigned,

KAREN THOMAS

do hereby make oath and say:

1. I am an adult female, currently employed at Cape Town events and residing at Helium Heights with my family.

BODY OF DOCUMENT
The facts you will be relying on, the reason you think you should not be evicted, your personal circumstances and how the eviction will negatively affect you and your family.

THE OPPOSING AFFIDAVIT

> An opposing affidavit is your side of the story. In this affidavit you respond to the allegations made against you by your landlord in the Notice of Motion.

WHAT IS A NOTICE OF MOTION? (PAGE 25)

1. An **OPPOSING AFFIDAVIT** is **drawn up** by **your lawyer**.
2. They will **sit down with you** and ask **lots of questions** regarding **your case**. This is to help **establish your side of the story**.
3. It is **vital** that you are always **completely honest** with your lawyer as this document will be **signed under oath**.
4. **If you lie** on this affidavit you will be **committing a crime** and it will be **extremely difficult** for your lawyer to successfully **argue your case** or they can withdraw as your lawyer.

OPPOSING AFFIDAVIT

EXAMPLE ON PAGE 32

This document, written under oath, contains your side of the story. It will include the facts from your perspective as well as your personal circumstances, which must be taken in to account by the court when deciding whether to evict you or not.

! ALWAYS BE COMPLETELY HONEST

Being dishonest or withholding information from your lawyer is bad for your case. You must give them all the facts so they fight your case the best they can. Client-attorney privilege means that any information you give to your lawyer must remain private between you two and they cannot tell other people if you do not want them to.

OTHER LEGAL DOCUMENTS

> During your eviction case, there may be a need for your lawyer to submit new documents in response to those submitted by your landlord. These documents may include:

ENSURE ALL INFORMATION IS PROVIDED IN YOUR AFFIDAVITS

In an eviction everything is argued on paper, so it's important to provide ALL information in your affidavit. The court has a duty of care to poor tenants and should ask you about your personal circumstances before they make a decision.

REPLYING AFFIDAVIT

A replying affidavit is a chance for the landlord to reply to the story and facts you put before the court in your opposing affidavit. The landlord will have a chance to deny or accept your version. This is also the opportunity for the landlord to reply to the affidavit by the City (see page 39 for City's report/affidavit).

SUPPLEMENTARY AFFIDAVIT

A supplementary affidavit is a document where you have a chance to respond to any new matters that have come up during the legal proceedings. This is a chance to respond to the affidavit by the City, as well as a chance to add anything you might have left out of your opposing affidavit.

WHAT IS A NOTICE OF MOTION? (PAGE 24)

OPPOSING YOUR EVICTION

TAKING ACTION

TASK TO COMPLETE	PAGE	DONE
1 FIND LEGAL REPRESENTATION OR ADVICE	36	☐
It is important that you seek legal advice or representation immediately (see page 36). Once you receive your Notice of Motion, it means legal proceedings have officially begun.		
2 GO TO THE ADVICE ASSEMBLY	61	☐
Knowledge is key to understanding and navigating the eviction process. Go to the Reclaim the City Advice Assembly to learn how to oppose your eviction, and how to find legal representation.		
3 GO TO COURT ON THE DATE OF YOUR HEARING	47	☐
If you do not appear in court on the day of your hearing, you will be evicted! Whether or not you have found a lawyer, you must go to court and oppose your eviction.		
4 REQUEST A POSTPONEMENT TO FIND LEGAL REPRESENTATION	30	☐
Every South African has a right to Legal representation. If you do not have a lawyer, you must request a postponement from the judge in order for you to find legal representation. If you have already been looking for a lawyer, you must show the court proof of this, with a letter from the law clinics you have already been to.		
5 OPPOSE YOUR EVICTION IN COURT	30	☐
Tell the judge that you are opposing your eviction. If you do not have a lawyer yet, you can make this statement yourself when you are called to the stand.		

SECTION 6

HOW TO FIND & INSTRUCT A LAWYER

FREE LEGAL REPRESENTATION FOR THOSE IN NEED

> Everyone has the right to a lawyer. If you have received a Notice of Motion, seek legal representation or advice as soon as possible.

1. Having **legal representation** (see next page for description of legal advice vs. legal representation) is a **constitutional right** afforded to **everyone** in South Africa. If you **can't afford a lawyer**, you can request free legal representation from the State. This representation is not guaranteed.

2. If you choose to **represent yourself**, it is still recommended that you **seek** legal advice.

3. If you are a **South African citizen**, **LEGAL AID SOUTH AFRICA** is the main form of **government funded legal assistance** available to you.

4. If you are **not an SA citizen**, you can approach the Legal Practice Council (formerly the Cape law Society) and any **free legal clinics** for assistance (see page 38) or pay for a private lawyer.

! KEEP RECORDS OF ATTEMPTS TO FIND LEGAL REPRESENTATION

When you go to court, it is extremely important that you are able to prove to the judge or magistrate that you have made an effort to find legal representation. Make sure to request written responses from all the legal clinics you have approached.

LIST OF FREE LEGAL CLINICS (PAGE 38)

THE DIFFERENCE BETWEEN LEGAL ADVICE & LEGAL REPRESENTATION

LEGAL ADVICE

Legal advice is when a qualified lawyer consults with you, understands the facts of your matter and gives you advice on what your options are. However, they are not considered to be your lawyer at this point.

LEGAL REPRESENTATION

Once a lawyer has officially taken on your matter, you become their client and they are your legal representative. This means they can go to court and represent you.

QUALIFYING FOR FREE LEGAL REPRESENTATION

> Certain law clinics offer pro bono (free) legal assistance. To qualify to receive this assistance, you must meet the following criteria.

1 LIMITED OR NO EMPLOYMENT

To qualify, you must either be unemployed or earning less than R5500/month after tax.

2 HOUSEHOLD LIMITATIONS

If you are part of a household (2 or more people) the household must earn less than R6000/month after tax.

3 PROPERTY VALUE

If you own a house, it, and all the belongings inside it, cannot be worth more than R500,000. You can only own one house and it must be the one you are living in.

4 VALUE OF BELONGINGS

If you DO NOT own a house, then the total value of all your belongings (for example, your car, furniture, clothes and other personal things) must not be worth more than R100 000.

LIST OF LEGAL ASSISTANCE ORGANISATIONS

LEGAL AID SOUTH AFRICA

BEST OPTION FOR SA CITIZENS

3rd Floor South African Reserve Bank Building, 60 St Georges Mall, Cape Town, 8001

Tel: (021) 426 4126
Toll-Free Legal Advice: 0800 110 110
Send a Please Call Me: 079 835 7179
Email: legalaidadvice@legal-aid.co.za
Web: www.legal-aid.co.za

Open Hours: 8AM to 3PM (Mon-Fri)

LEGAL RESOURCE CENTRE

54 Shortmarket Street,
Greenmarket Square,
Cape Town

Tel: 021 481 3000
Email: info@lrc.org.za
Web: www.lrc.org.za

Open Hours: 8AM to 3PM (Mon-Fri)

LEGAL PRACTICE COUNCIL
(FORMERLY THE CAPE LAW SOCIETY)

BEST OPTION FOR NON-CITIZENS

Absa Centre,
2 Riebeek Street,
Cape Town

Tel: 021 443 6700
Email: cls@capelawsoc.law.za
Web: www.capelawsoc.law.za

Open Hours: 8AM to 5PM (Mon-Fri)

UCT REFUGEE LEGAL CLINIC

BEST FOR REFUGEES & ASYLUM SEEKERS

Refugee Rights Unit
4th Floor Kramer Law School, UCT Middle Campus

Tel: 021 650 3775
Email: refugeelawclinic@uct.ac.za

Open Hours: 8:30AM to 4:30PM (Mon-Fri)
Closed everyday (1PM to 2PM)

ENQUIRE AT MULTIPLE LAW CLINICS & KEEP RECORDS

Do not just go to one place! The more law clinics you go to, the better chance you have of finding a lawyer quickly. Keep records of all your attempts to find legal representation.

DETAILS AVAILABLE ONLINE www.evictions.org.za/legal-aid

NDIFUNA UKWAZI LAW CLINIC

Tel: 021 012 5094
Email: contact@nu.org.za
Web: www.nu.org.za

UCT LAW CLINIC

Room 436 4th Floor Kramer Law School Building, 1 Stanley Avenue, Rondebosch, Cape Town, 7700

Tel: 021 650 3775
Email: uctlawclinic@uct.ac.za
Web: www.lawclinic.uct.ac.za

Open Hours: 8AM to 5PM (Mon-Fri)

INSTRUCTING A LAWYER

> Instructing your lawyer means telling them all the facts about your case as well as what outcome you want.

1. If you feel you are **being unfairly evicted**, you need to instruct your lawyer to **oppose your eviction**.
2. Some **pro bono (free) lawyers** are **not eviction specialists**. For this reason, it is **important** that **you** have a **good understanding** of the entire **eviction process**. This will allow you to know if your **lawyer** is **acting** in your **best interests**.
3. If you feel your **lawyer** is **not acting** in your **best interests**, you should find a **new lawyer**.

READ THIS ENTIRE GUIDE

Fully understanding the entire eviction process will allow you to better instruct your lawyer and understand what steps to take next.

LIST OF FREE LEGAL CLINICS (PAGE 32)

TAKING ACTION

TASK TO COMPLETE	PAGE	DONE

1 APPROACH A FREE LEGAL CLINIC 38

Legal advice and assistance is available to South African citizens and non-citizens alike. However, only SA Citizens are eligible for free legal representation through Legal Aid.

IF YOU ARE A SA CITIZEN

Contact Legal Aid South Africa (page 38), and then as many other legal clinics as possible.

IF YOU ARE NOT A SA CITIZEN

Contact the Legal Practice Council (page 38) and then as many other legal clinics as possible.

2 GET PROOF THAT YOU LOOKED FOR LEGAL REPRESENTATION

Being able to prove in court that you made an effort to find legal representation is very important when seeking a postponement to your case. Be sure to get written responses from any legal clinics that you approach, and keep records of all communications. If you do not appear to have made an effort, the judge or magistrate may not grant you a postponement.

3 READ THIS GUIDE & ATTEND AN ADVICE ASSEMBLY

In order to instruct your lawyer properly, you need to understand the eviction process. Be sure to read this entire guide and, attend an Advice Assembly (see page 61), if you can.

4 FOLLOW UP WITH LAW CLINICS 38

If you are waiting to hear back from a law clinic regarding legal representation, follow up with them regularly. Email or phone them, or go to their offices in person and request an update on your case. Putting pressure on them can speed up the process and mean that you find representation faster.

SECTION 7

YOUR RIGHT TO EMERGENCY HOUSING

THE CITY'S DUTY TO PROVIDE ACCOMMODATION

> The City of Cape Town municipality has a duty to provide emergency housing to anyone who will be made homeless by an eviction.

BEING CITED

When someone is cited, they are officially part of a court case. Citing someone means ensuring that they appear on the court papers as a respondent under your name.

1. The City of Cape Town must be **CITED** in all eviction applications and must produce a report on the availability of emergency alternative accommodation for those who qualify.
2. When served with papers, such as the Notice of Motion (page 25) and Section 4(2) Notice (page xx), ensure the City is cited.
3. If the City is not cited, your lawyer must cite them in the Opposing Affidavit (page 32), and serve both the City and your landlord.
4. When serving these papers, be sure to include a letter stating you will be made homeless, as well as all relevant contact details so that they cannot claim that they were not able to contact you.

MEANINGFUL ENGAGEMENT WITH THE CITY

> Once the City of Cape Town is part of the case, they must engage with you meaningfully to understand your circumstances and come to an agreement on suitable emergency housing.

1. The city is obliged to engage meaningfully with you once they are cited in your eviction case.
2. Despite this obligation, the city has been known to avoid meaningful engagement.
3. If the City does not want to engage meaningfully with you, you must send them letters and call them to prove to the court that you made an effort to engage and it was the City who was not doing their job.

REVISIT MEANINGFUL ENGAGEMENT (PAGE 20)

! THE CITY DOES NOT ALWAYS ENGAGE PROPERLY

Despite their obligations and the regulations put in place to ensure that meaningful engagement takes place, The City of Cape Town does not always engage properly.

CONTACT THE CITY!

City of Cape Town Municipality:

Address:
Civic Centre, Podium Block, 6th Floor,
12 Hertzog Boulevard,
Cape Town, 8001

Telephone: 086 010 3089
Email: contact.us@capetown.gov.za

Legal Services Department:
Telephone: 021 400 2908
Email:

Housing Department :
Telephone: 021 444 0333
Email: housingdb@capetown.gov.za

Web: www.capetown.gov.za
Hours: Mon–Fri, 7:30AM–5PM

STEPS THE CITY SHOULD TAKE

1 CONTACT & ARRANGE TO MEET

It is the city's responsibility to contact you and arrange a meeting to discuss your eviction.

2 SEND YOU A QUESTIONNAIRE

As part of understanding the details of your case, as well as your personal circumstances, the city must send you a questionnaire to complete which outlines the important details of your situation.

3 OFFER ACCOMMODATION

Based on your personal circumstances and level of need, the City should offer you suitable emergency accommodation.

4 SUBMIT A REPORT TO THE COURT

The City should submit a report (in the form of an affidavit) to the Court containing the following information:

- Their duty to provide you with emergency accommodation.
- Date and record of your engagement.
- An offer of emergency accommodation if you qualify.

EXAMPLE OF THE CITY'S REPORT (PAGE 45)

STEPS YOU SHOULD TAKE

1 ANY OFFER IS GUARANTEED

Understand that there is no waiting list for emergency accommodation. If the City offers you accommodation, it is guaranteed and must be provided to you.

2 KEEP RECORDS OF ENGAGEMENT

Be sure to keep any records of engagement with the city. These include, letters, emails, SMSs, and the dates and times of any phone calls etc. This information is always important to your case.

3 REJECT ANY RELOCATION CAMPS

If the City only offers you a place in a **RELOCATION CAMP**, such as Wolwerivier or Blikkiesdorp, you need to clearly object to this during your engagement. It must be part of the record that you objected to unsuitable living conditions. Ask them for a written response to any objections you had.

4 ENSURE A REPORT IS FILED

If the City has not filed a report you must ask the court to postpone the matter until they do. The court CANNOT make a decision without all the facts and the City's report is vital to this.

RELOCATION CAMP

Currently Cape Town only provides emergency housing in relocation camps. The Wolwerivier Camp is built on a farm more than 30km drive from the City Centre. It does not have adequate services like schools, hospitals, regular transport, or shops.

THESE DOCUMENTS ARE EXAMPLES ONLY. THEY ARE NOT BASED ON REAL EVENTS OR PEOPLE.

CITY OF CAPE TOWN AFFIDAVIT

*The **CITY OF CAPE TOWN AFFIDAVIT:** The municipality has to respond to **ALL** eviction cases. Their **AFFIDAVIT** says what alternative accommodation they have available for the occupier should the occupier be made homeless in the eviction.*

IN THE MAGISTRATES COURT FOR THE DISTRICT OF CAPE TOWN
HELD AT CAPE TOWN

COURT YOU NEED TO BE IN

CASE NO : 5847 / 2016

In the matter between:

BIG PROPERTIES — **APPLICANT (YOUR LANDLORD)** — Applicant
(Registration Number: 2010/0054896/07)

and

KAREN THOMAS — First Respondent
And all those holding under her and / or any other persons(s) who also occupy the premises *vis-à-vis* the Respondent

THE RESPONDENT(S)
This is you and anyone else living in the property. Their names will only be mentioned if they are over 18 years of age.

CITY OF CAPE TOWN — Second Respondent

THE MUNICIPALITY IF THEY ARE CITED
If they are not here then you must tell your lawyer and the court they should be cited.

AFFIDAVIT — **TYPE OF DOCUMENT**

I, the undersigned,

JOHN DUIK

do hereby make oath and say:

BODY OF DOCUMENT
The municipality's report content, details the results of their investigation into your personal and housing circumstances and what emergency accommodation they have available and can offer you.

FINDING EMERGENCY HOUSING

TAKING ACTION

TASK TO COMPLETE	PAGE	DONE

1 ENSURE THE CITY IS CITED 41

The City of Cape Town Municipality should be cited in ALL eviction cases. It is their job to understand your circumstances to see if you will be made homeless by an eviction.

IF THE CITY IS CITED

Proceed to step 2.

IF THE CITY IS NOT CITED

Instruct your lawyer to cite the City in your Opposing Papers (see page 31).

2 TELL THE CITY YOU WILL BE MADE HOMELESS 41

Whether or not the City has been cited, you must inform them that you will be made homeless by your eviction. The City cannot ignore this information and must engage with you.

3 OBJECT TO UNSUITABLE EMERGENCY ACCOMMODATION

Wolwerevier and Blikkiesdorp are two relocation camps far outside of Cape Town. There are no schools, shops or clinics at these locations. If the City offers you accommodation at one of these sites, you must object and ask for a written response from the city.

4 KEEP A RECORD OF ALL ENGAGEMENTS

Always keep all records of any engagements with the City. Dates, times and what was discussed/promised can be very important in court.

4 MAKE SURE THE CITY'S REPORT TO THE COURT IS ACCURATE

After the City has assessed all options for emergency accommodation, they will submit a report to the court. You must ensure that the report accurately reflects your engagement with the city. If the report is not accurate, your lawyer must report this to the court.

SECTION 8

GOING TO COURT

WHAT TO EXPECT WHEN GOING TO COURT

> An eviction hearing is where the arguments between Landlords (Applicants) and Tenants (Respondents) are heard by a judge or magistrate.

1. Once all documents have been filed with the court, a date is given for the court hearing.
2. In the hearing, everything that has been placed on affidavit will be argued in court.
3. Once the court has heard all the information, the judge will make an order that takes all relevant factors into consideration.
4. If the judge decides to evict you, they will issue a **COURT ORDER** giving the date by which you must leave the property.

COURT ORDER

Is an official order that has been written by the judge/magistrate and must to be obeyed. A court order authorises the carrying out of certain steps by one or more parties. E.g. If you are evicted you must leave the property by a certain date.

LIST OF COURTS www.evictions.org.za/courts

FINDING THE RIGHT COURT

1 CHECK COURTROOM & DATE

The notice of motion will tell you which court you need to be in and on what date you need to appear.

2 LOCATE YOUR LOCAL COURT

Your case will be heard in the court nearest to the property in question. In certain cases, you may be called to the High Court.

3 GOING TO THE HIGH COURT

If your court papers say "High Court" then you need to go to the Cape Town High Court in Keerom Street.

FIND THE NEAREST COURT TO YOU (PAGE 49)

FINDING THE RIGHT COURTROOM

> Evictions are held in Motion Court, so ask a clerk, security officer, or any of the lawyers walking around where the Motion Court is.

1 FIND YOUR COURTROOM EARLY

Court buildings are difficult to navigate and badly signposted. Be sure to arrive early enough to allow yourself time to locate the correct courtroom. If you miss your court appearance, you may be evicted!

2 ASK FOR ASSISTANCE

If there is an information desk, ask them which room evictions are in. If there is no information desk, the clerk of the court, any lawyer, security, guard or anyone who looks like they work at the court building.

LIST OF CAPE TOWN COURTS

> Check your Notice of Motion to see which court you are in.

Cape Town High Court:

35 Keerom St,
Cape Town

Telephone: 021 480 2411
Hours: Mon–Fri, 9AM–3PM
Closed daily from 1PM–2PM

Athlone Magistrates' Court	Old Klipfontein Road	021 697 1246
Atlantis Magistrate's Court	c/o Wesfleur Circle & Reygersdal Street	021 572 1003
Bellville Magistrates' Court	c/o Voortrekker Road & Landdros Street	021 950 7700
Bishop Lavis Magistrates' Court	c/o Myrtle and Valhalla Drive	021 934 1021
Blue Downs Magistrates' Court	Eersriver Way & Bentley St	021 909 9000
Cape Town Magistrates' Court	7-11 Parade Street	021 401 1556
Goodwood Magistrates' Court	273 Voortrekker Road	021 591 3171
Khayelitsha Magistrates' Court	c/o Walter Sisulu and Steve Biko	021 360 1400
Kuilsriver Magistrates' Court	122 Van Riebeeck Road	021 903 7902
Mitchells Plain Magistrates' Court	1st Avenue, Eastridge	021 370 4200
Parow Regional Court	Arnold Wilhelm Street	021 936 9400
Phillippi Magistrates' Court	c/o New Eisleben and Govan Mbeki Road	021 372 0902
Simon's Town Magistrates' Court	133 St Georges Street	021 786 1561
Somerset West Magistrates' Court	33 Caledon Street	021 850 7420
Wynberg Magistrates' Court	64 Church Street	021 799 1800

LIST OF CAPE TOWN COURTS **www.evictions.org.za/courts**

FIRST APPEARANCE: OPPOSING & POSTPONING

> If you are going to court for the first time and do not have a lawyer, do these two things:

YOUR RIGHT TO A LAWYER

Courts must respect your right to legal representation and will usually grant a postponement.

1 OPPOSE YOUR EVICTION

Once your case is called and you are requested to approach the witness stand, you must state that you would like to oppose your eviction.

2 REQUEST A POSTPONEMENT

Request a postponement from the judge in order for you to find legal representation for yourself. At your first appearance, the judge should always grant a postponement.

SECOND/THIRD APPEARANCE (WITHOUT A LAWYER)

> Any further postponements to your case will require evidence of an effort on your part to find legal representation.

1 SHOW EVIDENCE OF ATTEMPTS

Present any communications from legal aid organisations (page 38) that prove you have made an effort to find representation.

2 DO NOT FEEL INTIMIDATED!

Do not feel rushed into representing yourself! As long as you have proof that no pro bono (free) lawyer is available to take your case, you should be granted an extension.

ARGUMENT

> After opposing and finding a lawyer (or choosing to represent yourself), both sides will present their arguments.

SEEK LEGAL ADVICE IF YOU ARE REPRESENTING YOURSELF (PAGE 36)

1 PRESENTING YOUR CASE

Remember, you can only argue what has been written in your affidavits. No new evidence, information or arguments may be brought before the court unless there has been a relevant and material change to circumstances of the parties.

! ENSURE AFFIDAVITS CONTAIN ALL RELEVANT INFORMATION

It is vital that you have submitted documents to the court that backup your case. You cannot decide to provide alternative information in court if it is not present in your affidavit.

SETTLEMENT

> At any stage before the court has ruled, you can come to an agreement with your landlord.

1 CONSIDER OFFERS CAREFULLY

Often your landlord will make a settlement offer. Sometimes it is fair, sometimes it may not be. Remember, you do not have to accept this offer. Always consult with a lawyer!

2 AVOID RUSHED AGREEMENTS!

Offers may be presented at short notice before going to court. Do not feel rushed! Tell your landlord you would like to take your time to consider the offer and seek advice.

THE COURT ORDER

EXAMPLE OF A COURT ORDER (PAGE 53)

> The ruling from the court stating whether you are to be evicted or not. If you are evicted, the order will state by when you need to leave the property.

WHAT TO DO AFTER YOUR COURT ORDER IS RECEIVED (PAGE 55)

1 DATE OF EVICTION

The order by the judge will clearly state by when you will need to leave the property. Even if you are evicted, this date will usually take into account your circumstances and allow sufficient time for alternative arrangements to be made.

2 DATE OF REMOVAL (EXECUTION)

There will also be a date specified by which, if you have not left the property, the Sheriff will be allowed to physically remove you. This is called the “execution date”, and it is usually a few days after the eviction date.

THESE DOCUMENTS ARE EXAMPLES ONLY. THEY ARE NOT BASED ON REAL EVENTS OR PEOPLE.

THE COURT ORDER

The ***COURT ORDER*** will state whether you have been evicted or not. If you are evicted it will say by what day you must leave the property.

IN THE MAGISTRATES COURT FOR THE DISTRICT OF CAPE TOWN
HELD AT CAPE TOWN

COURT YOU NEED TO BE IN

CASE NO : 5847 / 2016

In the matter between:

BIG PROPERTIES — **APPLICANT (YOUR LANDLORD)** — Applicant
(Registration Number: 2010/0054896/07)

and

THE RESPONDENT(S)
This is you and anyone else living in the property. Their names will only be mentioned if they are over 18 years of age.

KAREN THOMAS — First Respondent
And all those holding under her and / or any other persons(s) who also occupy the premises *vis-à-vis* the Respondent

CITY OF CAPE TOWN — Second Respondent

THE MUNICIPALITY IF THEY ARE CITED
If they are not here then you must tell your lawyer and the court they should be cited.

ORDER — **TYPE OF DOCUMENT**

THE COURT HEREBY ORDERS that the First Respondent and her family vacate the property known as Helium Heights by 30 November 2017.

Should the First Respondent and her family not vacate the property by the 30th of November, the court orders that the Sherriff be allowed to remove them from the property on the 15th of December 2017.

BODY OF DOCUMENT
States whether you are evicted or not. If you are NOT evicted you can continue to live in the property. If you ARE evicted it will say what date you need to move out by. If you ARE evicted it will also say what date the Sheriff can come and physically remove you from the property (usually a few days after the date to vacate).

TAKING ACTION

TASK TO COMPLETE	PAGE	DONE
1 LOCATE THE RIGHT COURT & COURTROOM	48	☐

Make sure you know where the court is. You must be at the court before 9am on the day of your hearing. You can even go to court before your court date, just to get familiar with the court and how long it will take you to get there.

2 CONTACT RECLAIM THE CITY FOR SUPPORT	61	☐

If you are in court in Cape Town or Wynberg Magistrates' Courts, Reclaim the City are happy to come with you to show you around the court. They can help you find the right courtroom and what to expect when you have your first appearance in court.

3 OPPOSE YOUR EVICTION	28	☐

You must oppose your eviction if you feel your landlord does not have grounds to evict you or you need more time to find somewhere else to live. (see page 28). When your case is called, tell the court you are opposing your eviction.

4 ASK FOR A POSTPONEMENT TO FIND LEGAL REPRESENTATION	50	☐

Once you have told the court you are opposing your eviction, ask for a postponement to find legal representation. At this point, it will help to show proof of any attempts you have made to find legal representation

5 DO NOT SIGN OR SETTLE AT COURT	51	☐

Your landlord or their lawyers may present you with a settlement offer before your court appearance. DO NOT RUSH INTO ACCEPTING ANY OFFERS. Take your time and seek advice from a lawyer or housing activists like Reclaim the City. Make sure you fully understand the offer before you sign anything. Do not feel pressured!

SECTION 9

WHAT TO DO AFTER YOUR COURT ORDER

WHEN AND HOW DO I RECEIVE A COURT ORDER?

> Court orders can be received in person on the day of the judgement in court. In some cases the court may require more time and you will be advised to return to collect the judgement and the court order at a later date.

EXAMPLE OF A COURT ORDER (PAGE 53)

1 IN COURT FOR JUDGEMENT

If you are in court when judgement is handed down, even if you do not receive a court order, it is assumed that you have received the order verbally by the magistrate. The order cannot be ignored.

2 NOT IN COURT FOR JUDGEMENT

If you cannot make it to the court to receive the judgement and court order in person, your landlord is responsible for ensuring you receive a copy. The Sheriff may also be asked to deliver the court order to you at your home or work, but you need to give a very good reason for not going to court to receive your judgment.

! ENSURE THE COURT HAS YOUR CORRECT CONTACT DETAILS

To avoid confusion when receiving your court order, make sure the court has your most up-to-date contact information.

WHAT TO DO ONCE A COURT ORDER IS RECEIVED

SCENARIO 1 — YOU WIN THE CASE. YOU ARE STILL A LAWFUL OCCUPIER

In this case you continue the tenant-landlord relationship as it was before, according to the lease. You keep living in the property and you keep paying rent. At this stage it is likely that your landlord will still want to evict you and will go about the process again, but correctly this time. For this reason you should start looking for alternative accommodation. You do not want to get back to the court stage and not have any options for places to live.

SCENARIO 2 — YOU WIN THE CASE. YOUR OCCUPATION IS DEEMED UNLAWFUL. BUT YOU ARE NOT EVICTED (DEEMED NOT JUST AND EQUITABLE)

This is a tricky situation to be in. In this case you remain on the property but there is no tenant-landlord relationship and the lease is not enforceable. However, you are still occupying someone's property without an agreement, so while you won't be paying rent you may have to pay damages for your use of the property. At this stage you should engage with your landlord and try come to a new agreement, as well as start looking for alternative accommodation. You can also ask your landlord to help you find somewhere else to stay as this would help you get out of their property sooner. Lastly, you should speak to the Municipality (City of Cape Town) for Emergency Housing or other housing programs, such as Social Housing.

SCENARIO 3 — YOU LOSE THE CASE AND ARE EVICTED

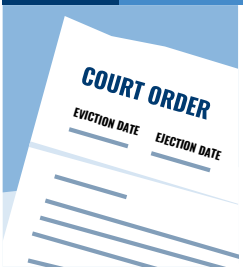
In this situation you need to read the court order immediately and very carefully. You must understand how an eviction is executed and what happens on the dates mentioned in the court order. At this stage you will know how long you have until you need to vacate the property. You must start looking for alternative accommodation immediately. Look online and in newspapers, ask friends and family, ask your landlord, and go to the City of Cape Town to ask about Emergency Housing and their other Housing Programmes (see page 42). You should also start preparing your belongings to be transported or stored.

HOW ARE EVICTIONS EXECUTED? (PAGE 57)

HOW EVICTIONS ARE EXECUTED

UNDERSTAND THE PROCESS

STEP 1 YOU RECEIVE A COURT ORDER FOR YOUR EVICTION



EXAMPLE OF A COURT ORDER (PAGE 53)

This can be received from the court or may be delivered in person by the Sheriff. On the court order, there will be two important dates listed:

THE EVICTION DATE

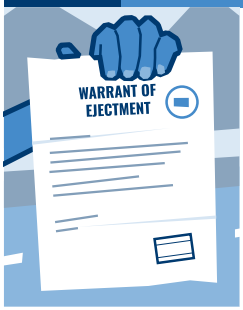
The date by which you officially need to vacate the property.

THE EJECTION/EXECUTION DATE

The date, following the eviction date, by which the Sheriff will be authorised to remove you and your belongings from the property.

IMPORTANT: If the Sheriff does not arrive on the day specified in the court order, this does not mean you are not evicted! The Sheriff may arrive any day after that and it is important that you are prepared.

STEP 2 THE SHERIFF MUST OBTAIN A WARRANT OF EJECTMENT



If you have not vacated the property by your eviction date, the Sheriff cannot remove you from your home without a warrant of ejectment. They have to go to court to obtain this warrant.

IMPORTANT: You can call your local Sheriff and inquire about your case. Ask them if they have the warrant yet and on what day they plan to evict you.

CONTACT DETAILS FOR LOCAL SHERIFFS

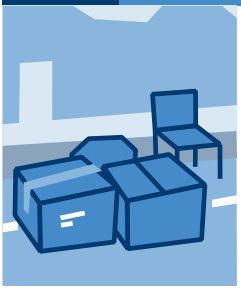
www.sheriffs.org.za

STEP 3 NECESSARY FORCE MAY BE USED TO REMOVE YOU

Once the Sheriff has acquired the warrant of ejectment, and if you as the tenant have not vacated the property by the date of eviction, the Sheriff is permitted to use "necessary force" to get you out.

IMPORTANT: Necessary force does not mean that they can abuse you! The Sheriff is permitted to request the assistance of the police to remove you and your belongings from the property.

STEP 4 YOUR BELONGINGS ARE REMOVED FROM THE PROPERTY



You must communicate with the Sheriff to establish what you would like to be done with your belongings. You have two options for how to deal with your belongings:

USE A STORAGE FACILITY

The Sheriff takes your belongings to a storage facility and holds them there for you to collect at a later date. You will likely be charged storage fees which you have to pay before the Sheriff will release your belongings. **You must demand the details for this storage location.**

LEAVE BELONGINGS ON THE STREET

You choose not to store your belongings and they are left on the street outside the property. **It is your responsibility to remove them.**

IMPORTANT: If anything is broken through the negligence of the Sheriff, you will need to sue the Sheriff for damages. The Landlord will likely be joined with the Sheriff in the matter. If SAPS break any of your belongings through their own negligence then you will need to sue SAPS in court. Take note that if it rains and your stuff is damaged, you are liable and not the Sheriff, your landlord, or the Police.

APPEALING A COURT DECISION

> In a magistrate's court, you have the right to immediately appeal your eviction. You can do so by asking your lawyer to file a Notice of Appeal.

1. **Once** the **NOTICE OF APPEAL** has been **filed with the court**, your eviction is **STAYED**.
2. **Once** your **Notice of Appeal** is **filed**, **inform** the **Sheriff** of the court **immediately** so that they **do not** act to **evict** you **by mistake**.
3. **While** the **appeal process** is **underway**, **nobody** may act to **remove you** from your **home**.
4. **During** the appeal **process** there are **specific timelines** that **cannot** be **missed**. **If** you do **miss** a deadline, your **appeal** may **lapse** and your **eviction** can be **executed**.
5. **Ensure** that your **lawyer** keeps **you informed** and **stays on** top of the **appeal process**.

NOTICE OF APPEAL

This document notifies the court and your landlord that you are appealing the matter. In the Magistrates' Court you have automatic right to appeal. This means you do not have to apply to the court for permission to appeal.

STAYED EVICTION

An eviction order that is paused while an appeal process happens. You are technically still evicted but nobody can act on the eviction (remove you from your home).

TAKING ACTION

TASK TO COMPLETE	PAGE	DONE

1 READ THE COURT ORDER & TAKE NOTE OF DATES

You must carefully read your court order as soon as you get it. It will contain very important information and dates. If you are evicted, you must make a note of the eviction date, as well as the execution/ejection date (see page 53).

2 LOOK FOR ALTERNATIVE ACCOMMODATION

Win or lose, you should start searching for alternative accommodation immediately. Take note of your eviction date, this will tell you how long you have to find new accommodation.

3 PREPARE YOUR BELONGINGS

Start packing your belongings as soon as possible in preparation for moving and/or storage. The more organised you are, the faster you can act when the time comes and the less likely it will be for things to get lost or damaged.

4 UNDERSTAND HOW AN EVICTION IS EXECUTED 57

Prepare yourself for the eviction by studying this section carefully. If you know what to expect you will be better prepared.

5 SEEK LEGAL ADVICE TO APPEAL 36

Get legal advice on whether or not you should appeal. While an appeal might sound like an easy way to stay (or delay) your eviction, there are consequences of appealing without good reasons. Speak to a lawyer and get their opinion on if you should appeal or not.

RECLAIM THE CITY

ADVICE ASSEMBLY

WHAT IS THE ADVICE ASSEMBLY?

> The Advice Assembly is a weekly meeting of tenants, occupiers, and activists. It is a space to learn about your rights, the eviction process and the law.

ATTEND ADVICE ASSEMBLY

Advice Assembly currently takes place every Thursday at 7pm. All are welcome! Please note that times and days may change in the future. Call 021 012 5094 to check.

Woodstock Advice Assembly:
Cissie Gool House (Old Woodstock Hospital), 36 Mountain Road, Woodstock

Sea Point Advice Assembly:
Ahmed Kathrada House (Helen Bowden Nurses Home), Corner Beach Rd & Granger Bay Blvd

The ADVICE ASSEMBLY is an initiative created by RECLAIM THE CITY. At Advice Assembly **we stand in solidarity to prevent and resist unlawful evictions and unfair landlord practices**. Many who have been through an eviction still attend Advice Assembly so that they can help others going through what they went through.

WHAT THE ADVICE ASSEMBLY DOES NOT DO

The Advice Assembly is NOT a legal clinic and **you will NOT get formal legal advice or legal representation**. However, there are often lawyers present and others who know the law that can guide you in the right direction to find a lawyer who can represent you in court. **The Advice Assembly does NOT provide accommodation**. If you are looking for a place to stay they unfortunately cannot help you with that.

WHY YOU SHOULD ATTEND ADVICE ASSEMBLY

> Through Advice Assemblies, tenants have the power to make plans of action to resist unlawful and unjust evictions.

The Advice Assembly provides a space for tenants to support and advise each other and to decide on practical actions. The law is made accessible and people are linked to community organising and activism. Through Advice Assemblies, tenants have the power to make plans of action to resist unlawful and unjust evictions.

ABOUT RECLAIM THE CITY

CONTACT RECLAIM THE CITY

Facebook: Reclaim the City
Twitter: reclaimCT
Instagram: reclaimthecitysa
Website: www.reclaimthecity.org.za

Co-ordinating Committee:
committee@reclaimthecity.org.za
General enquiries:
contact@reclaimthecity.org.za

Reclaim the City is a movement of tenants and workers campaigning to stop displacement from well-located areas and secure access to decent affordable housing. They believe it is time to take the struggle for housing to the centre of the city, to the heart of power, to the people who should live there, and to the land that matters. **Land for people, not profit!**

CONTACT RECLAIM THE CITY FOR MORE INFORMATION

GLOSSARY

UNDERSTAND COMMON TERMS

> Definitions for common words that you may hear when dealing with your eviction case.

APPLICANT

The applicant is the party that starts the court process. In eviction cases the landlord is the applicant because they make an application to the court to have you evicted.

CITE

To cite is to notify a person of a court case against them or to call a person to appear in court.

APPEAR

To appear in court is when you have to be in court in person.

AFFIDAVIT

An affidavit is a sworn written statement made under oath. If you are intentionally untruthful in your affidavit you will be committing perjury, which is a criminal offence that could result in a prison sentence.

BREACH

A breach of your lease is when either you (the tenant) or your landlord breaks one of the rules you have agreed to. E.g. If it says you must pay rent on the first of every month and you forget to pay, then you have breached your lease agreement.

NEED HELP WITH YOUR EVICTION? ATTEND AN ADVICE ASSEMBLY! (SEE PAGE 61)

COSTS

Costs refer to the money that was paid for lawyers to represent you and your landlord in court. E.g. in your relief, you can request the court to order that the application is dismissed WITH COSTS. This means that your landlord would need to pay your lawyer's costs.

HOLDING TITLE UNDER

If you are the person who signed the lease and you have two children living with you, they are holding title under you and do not have to be named in the court papers.

PARTIES

Parties refer to the people or organisations involved in the court case. E.g. In an eviction the parties will generally be you (the tenant), your landlord, and the City of Cape Town.

RESPONDENT

The respondent is the party against whom the application is made. In eviction cases the tenant is the respondent.

DISPUTE

A dispute is an argument or disagreement between you and your landlord. E.g. If you think it is your landlord's job to fix the hole in your ceiling but they do not think they have to.

EVICTION APPLICATION

An eviction application is a legal procedure a landlord or landowner needs to follow if they want to evict you.

LEGAL REPRESENTATION

Legal Representation refers to a lawyer that is appointed to act on your behalf. A lawyer who gives you legal advice may not necessarily be representing you (I.e. they will not go to court for you). (Note: this person cannot act against your instructions.).

RELIEF

Relief refers to what help you are asking the court for. E.g. if someone crashed into your car and you decide to sue them, you approach the court for an order that they pay for the damage to your car.

SECTION 4(2) NOTICE

The SECTION 4(2) notice is a legal document that has to be served by the Sheriff to those being evicted. It is given to you with the Notice of Motion. This document is important because it has the DATE AND TIME of when you have to be in COURT. It also tells you that you can OPPOSE the eviction and you have the right to get legal representation.

TERMINATION

Termination means the cancellation or ending of a lease.

VACATE

To vacate means to leave the property entirely. You and anyone else who has been evicted, as well as all your belongings, must be out of the property.

SERVICE/BEING SERVED

Service is the act of giving legal papers to the person who must respond to them. Service of eviction papers (Notice of Motion and Section 4(2) Notice) will be done by the Sheriff. If you oppose your eviction YOU (or your lawyer) will serve your landlord (or their lawyer) with your legal documents.

UNDERTAKING

Undertaking is the act of doing something that has been agreed to.

VIS-à-VIS

VIS-à-VIS is a Latin term that means 'through' or 'in relation to'.

THESE DOCUMENTS ARE EXAMPLES ONLY. THEY ARE NOT BASED ON REAL EVENTS OR PEOPLE.

SECTION 4(2) NOTICE

***The SECTION 4(2)** notice is a legal document that has to be served by the Sheriff to those being evicted. It is given to you with the Notice of Motion. This document is important because it has the **DATE AND TIME** of when you have to be in **COURT.** It also tells you that you can **OPPOSE** the eviction and you have the right to get legal representation*

IN THE MAGISTRATES COURT FOR THE DISTRICT OF CAPE TOWN
HELD AT CAPE TOWN

COURT YOU NEED TO BE IN

CASE NO : 5847 / 2016

In the matter between:

BIG PROPERTIES — Applicant

APPLICANT (YOUR LANDLORD)

(Registration Number: 2010/0054896/07)

and

KAREN THOMAS — First Respondent

THE RESPONDENT(S)
This is you and anyone else living in the property. Their names will only be mentioned if they are over 18 years of age.

And all those holding under her and / or any other persons(s) who also occupy the premises *vis-à-vis* the Respondent

CITY OF CAPE TOWN — Second Respondent

THE MUNICIPALITY IF THEY ARE CITED
If they are not here then you must tell your lawyer and the court they should be cited.

S4(2) NOTICE

TYPE OF DOCUMENT

TAKE NOTICE THAT the Applicants hereby intend to bring an application for the eviction of an unlawful occupier in terms of s4 (1) of the Prevention of Illegal and Unlawful Occupation of Land Act 19 of 1998.

BODY OF DOCUMENT
Explains what the notice is about, I.e. service. The date and time of when you have to appear in court. It tells you that you can oppose your eviction and that you have the right to legal representation.

MAKE NOTES

THE EVICTION PROCESS

LEGAL ASSISTANCE

GUIDE TO

THE EVICTION PROCESS

RESOURCES AVAILABLE ONLINE

Visit: www.evictions.org.za