



Land Reform / Land Restitution and Land Claims

Familiarise yourself with the three elements of the land reform programme (redistribution, restitution and land tenure reform).

Redistribution: to provide the disadvantaged and poor with access to land for residential and productive purposes. Its scope includes the urban and rural very poor, labour tenants, farm workers and new entrants into agriculture.

Restitution: covers cases of forced removals which took place after 1913.

These are being dealt with by the Land Claims Commission and Land Claims Court.

Land Tenure reform: to improve the tenure security of all South Africans and to accommodate diverse forms of land tenure, including types of communal tenure.

Know your Legislation

Restitution of Land Rights Act, 22/1994, as amended.

Land Reform (Labour Tenants) Act, 3/1996, as amended.

Extension of Security of Tenure Act, 62/1997, as amended..

Provision of Land and Assistance Act, 126/1993, as amended..

Prevention of Illegal Eviction from Unlawful Occupation of Land Act, 19/1998, as amended.

Notification by Authorities

These acts may be viewed on the government website

Should anyone be an interested and affected party in any claim, at a gazetted stage, you will be notified thereof in terms of Section 11 of the Restitution Land Rights Act, 22 of 1994, as amended.

What constitutes a valid claim?

A claim for restitution is valid if it was lodged before 31 December 1998 by

1. a person or deceased estate or a community who lost their right to land after 9 June 1913 because of racially discriminatory practices or laws, or
2. a child of a person who lost such a right provided that person died without lodging a claim and has no ascendant (eg a parent) who has lodged a claim.

No claim will be valid if the claimant was paid fairly for the dispossession.

If a person dies before his/her claim is finalised then :

1. - his/her child will be substituted as a claimant if he /she left no will, or
2. - the executor of his/her estate- or his/her heirs if there is no executor- will be substituted as a claimant.

Who qualifies as a labour tenant and is entitled to make a claim under the act?

1. The claimant, or his/her family, lived on the property on 2 June 1995 and had been doing so since 1990 and /
2. His/her parents or grandparents were also labour tenants in RSA.

Disputes over whether a claimant is a labour tenant are often settled by determining whether what the claimant is paid in cash or in kind is greater than the value of his /her right to live on the farm and to

use the land for cropping or grazing.
If it is then the claimant is not a Labour Tenant.

Acquaint yourself with the 6 Phases / Steps in the Restitution / Claim Process

1. Screening
Claim is entered onto database only.
2. Validation
Claim form is checked for compliance to the Act. Note this does not check whether the claims are true or valid.
Further research - Claimants are contacted, actual boundaries being claimed are established, Background to claim is researched and verified or refuted, etc
3. Gazetted. - if it is valid.
4. Negotiations- valuations, monetary value of claim, project plan, case report, ministerial approval.
5. Settlement - ministerial approval or decision made by Land Claims Court (by court order).
6. Implementation of Settlement-land planning, support, handover, financial compensation.
What can you as a land owner do ?

If a land claim meets the requirements of the Restitution of Land Act, it cannot be contested. Land owners can however negotiate for fair compensation based on a fair market value.

Deal with the matter yourself as far is possible before briefing a lawyer.

If you feel a claim on your property is invalid , first take it up with the Regional Land Claims commissioner before incurring expensive legal fees.

If there is a registered claim on your property and you intend doing any expansion or development on your land first obtain approval from the Provincial Land Claims Commissioner .If approved you will be compensated for the improvements.

Compensation for claimants.

The Department of Land Affairs valuers will assess compensation based on the rights in the land at the time of use by the claimants.

This gives the Land Claims Commission the option of compensation for this value , as opposed to reinstating their rights to the land.

Perhaps the process of restoration , restitution and the reversing of past inequalities would not contemplate the wholesale conversion of tenancy rights to full rights of ownership.

Aim is equitable redress and perhaps once valuers have placed a value on the rights in land which the people exercised as tenants, the Commission should compensate them for these lost rights .

The Commission has however indicated that they prefer to give people land and will attempt to negotiate options which will result in claimants becoming land owners.

Valuation and Compensation for the land owners

Once a valuation of all properties concerned is complete , this then provides them with a budget and the ability to set up the process of negotiating with land owners.

NB Get access to the Medium Term Expenditure Framework (MTEF) budget for the Land Claims Commission which will give you an insight as to if funds are available for compensation in your case (presently the registered claims countrywide appear to exceed the available budget by a long way!)

Compensation is determined on a “willing seller, willing buyer “ method.

The Department of Land Affairs will determine a fair market value by looking at comparable sales in the area or if not available they will look at the productive value.

NB any cheap subsidies from state, soft loans and infrastructure subsidies are subtracted from the fair market value so the State doesn't pay again for land it already paid through subsidies.

If unhappy with the valuation land owners must get an independent valuer and then negotiate a settlement price with the department.

Expropriation

The Land Claims Commission realise that expropriation would almost invariably result in legal litigation and the Commission does not wish to be involved in the expense and delay of litigation any more than you would.

Obviously however they do have the option to rely on the Expropriation Act and no doubt it will inevitably occur when the Commission runs out of other options.

Be that as it may it is encouraging that the Land Claims Commission only relies on expropriation as a very last resort.

If Gazetted and verified /approved ?

The Land Claims Commission offers claimants 3 options:

1. Pay in cash.
- 2 Offer alternate land.
3. Land under claim - negotiate with present landowner (farm is valued at market related prices).

NB: The Regional Land Claims Commission encourages claimants to keep land in original large scale land use, perhaps with a management body.

There may be the possibility of leasing your old property back after it has been claimed and after you being paid out.

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