

Expropriation Without Compensation

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INTRODUCTION

The Expropriation Act of 2024 was signed into law by the President in January 2025, but it is yet to be implemented, wholly or in part.

The “**New Act**” will ultimately replace the Expropriation Act of 1975. This new Act, whilst aligning with Section 25 of the Constitution, introduces clear guidelines for how state organs on the local, provincial, and national levels can acquire property without compensation.

In this article we will address expropriation under our Constitution, the instances where property can be expropriated without compensation and what a party can do to challenge the compensation.

WHAT DOES THE CONSTITUTION SAY?

Section 25(2) of the Constitution provides that:

Property may be expropriated only in terms of law of general application

1. *for a public purpose or in the public interest; and*
2. *subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.*

Upon analysis of the abovementioned section the following is clear:

1. Land can already be expropriated if it is in the public interest of for a public purpose, such as addressing historical inequalities, promoting inclusivity, and improving access to natural resources.
2. Authorities must first attempt to negotiate reasonable terms with property owners before resorting to expropriation.
3. Disputes are resolved through mediation or courts.

4. Property cannot be taken arbitrarily or for purposes outside the public interest or a public purpose.

Important note: The New Act, defines these terms as follows:

- **Public interest** - includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources in order to redress the results of past racial discriminatory laws or practices; and
- **Public purpose** – includes any purposes connected to the administration of any law by an organ of state, in terms of which the property concerned will be used by or for the benefit of the public.

PROCESS OF EXPROPRIATION

An empowered Organ of State (“**Expropriating Authority**”) cannot simply arrive and lay claim to the Property in the name of expropriation. Rather a detailed and step by step process needs to be followed, a very brief summary of which is as follows:

- The Expropriating Authority must serve a notice of intention to expropriate on the owner of the Property, which Notice includes, amongst other things, the purpose of the expropriation and the proposed compensation.
- Any affected party may, within 30 days of publication of the said Notice, lodge with the Expropriating Authority, any objections or submissions relating to the expropriation.
- The Expropriating Authority reviews any submissions or objections and only then determines whether to actually expropriate or not.

It is important to note that nothing in the New Act precludes a person from approaching a Court “*on any matter relating to the application of the Act*”.

WHEN CAN EXPROPRIATION TAKE PLACE WITHOUT COMPENSATION?

In terms of the New Act, expropriation without compensation may only be possible in the following instances:

1. Unused Land for Speculative Purposes

Definition

This refers to land held primarily for the purpose of benefiting from its appreciation in value, rather than being used productively or for income generation. Speculative holdings often involve land being kept idle in anticipation of future development or resale at a higher price.

Criteria for Expropriation

For expropriation without compensation to apply, the land must not be used by the owner for any productive purpose, such as agriculture, housing, or commercial activities. The owner must also not have any genuine plans for development or use in the foreseeable future.

Legal Considerations

The decision to expropriate such land without compensation must be based on a thorough investigation into the land's current use and the owner's intentions. This process involves assessing whether the land is truly speculative and whether its expropriation would serve the public interest.

2. Unused State-Owned Land

Definition

This category includes land owned by organs of state (e.g., municipalities, government departments) that is not being used for their core functions or public services.

Criteria for Expropriation

The land must have been acquired without payment or compensation to the previous owner. Additionally, there must be no foreseeable need for the land by the state in the future.

Legal Considerations

The decision to expropriate without compensation must consider whether the state's holding of the land is truly unnecessary and whether its release would benefit the public. This involves a detailed assessment of current and future state needs.

3. Abandoned Land

Definition

Abandoned land refers to property that an owner has effectively relinquished control over, despite being capable of exercising such control.

Criteria for Expropriation

To qualify as abandoned, the owner must have shown a clear intention to relinquish ownership or control, such as failing to maintain the property, pay taxes, or respond to notices regarding the land's status.

Legal Considerations

Determining abandonment requires evidence of the owner's intent to abandon, which can be inferred from their actions or lack thereof. The process involves attempts to contact the owner and verify their intentions before proceeding with expropriation.

4. State Investment Exceeding Market Value

Definition

This scenario involves land where the state has invested more in acquiring and improving it than its current market value.

Criteria for Expropriation

The calculation must consider the present value of all direct state investments, including subsidies, grants, or other forms of financial assistance provided for the land's acquisition or development.

Legal Considerations

The decision to expropriate without compensation in this case requires a detailed financial analysis to ensure that the state's investment indeed exceeds the land's market value. This assessment must be conducted by an independent valuer to ensure fairness.

DISPUTING COMPENSATION

The New Act sets out a detailed process to follow to dispute the amount of compensation that is being considered. The first step is for the parties to try and mediate the dispute, trying to find a middle ground that is, to a degree, satisfactory to both parties.

Should mediation fail, then the matter can be referred to Court for an ultimate decision and Court Order.

The New Act not only allows the disputing party to implement Court proceedings but actually allows the Disputing Party to request that the Expropriating Authority institute proceedings instead of them doing so themselves.

CONCLUSION

It is clear that there already exists a legal framework for the expropriation of property by State Organs.

With the advent of the new Expropriation Act of 2024, expropriation without compensation is subject to strict conditions designed to ensure that such actions are just and equitable and not arbitrarily applied with the Courts ultimately deciding the outcome of any compensation disputes, if mediation fails.



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