

Agriculture, Aquaculture & Fishing

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SOUTH AFRICA

Navigating change: The new Expropriation Act v the old Expropriation Act



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Navigating change: The new Expropriation Act v the old Expropriation Act



The Expropriation Bill of 2020, as approved and signed by the President, was published on 24 January 2025. It is now formally known as the Expropriation Act 13 of 2024 (New Act). The date from which the New Act comes into operation is yet to be determined by the President, and will be confirmed by proclamation in the *Government Gazette*. The Expropriation Act 63 of 1975 (Old Act), which until now was the primary legislative authority governing expropriation of land, has been repealed with the enactment of the New Act.

As is highlighted in its preamble, the purpose of the New Act is to *"provide for the expropriation of property for a public purpose or in the public interest"*. It should be emphasised that *"property"* refers to both movable and immovable property. Our focus in this article is, however, on comparing certain changes in relation to immovable property. A notable addition to the purpose of the New Act is to *"identify certain instances where the provision of nil compensation may be just and equitable for expropriation in the public interest"*. This contrasts with the Old Act, which simply states that its purpose is to provide for *"the expropriation of land and other property for public and certain other purposes"*.



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When considering the New Act, it is apparent that it adopts the language of the Constitution of the Republic of South Africa, 1996 (Constitution) throughout its provisions. The preamble further refers to sections 25, 33 and 34 of the Constitution, which provide as follows:

Section 25: Property	Section 33: Just administrative action	Section 34: Access to courts
<ol style="list-style-type: none"> 1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property. 2. Property may be expropriated only in terms of law of general application: <ol style="list-style-type: none"> (a) for a public purpose or in the public interest; and (b) 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. 3. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including: <ol style="list-style-type: none"> (a) the current use of the property; (b) the history of the acquisition and use of the property; (c) the market value of the property; (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and (e) the purpose of the expropriation. 4. For the purposes of this section: <ol style="list-style-type: none"> (a) the 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; and (b) property is not limited to land. [...] 6. A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an act of Parliament, either to tenure which is legally secure or to comparable redress. 7. A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an act of Parliament, either to restitution of that property or to equitable redress. [...] 	<ol style="list-style-type: none"> 1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair. [...] 	<p>Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.</p>



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While there were discussions at a parliamentary level to amend the Constitution to specifically provide for expropriation without compensation, the relevant amendment bill did not proceed. However, Burton Meyer of CDH is of the view that such an amendment was not necessary in any event. [Read more here.](#) The legislature seems to agree with this position given the additional purpose of the New Act highlighted above.

The New Act has introduced several changes to the law surrounding expropriation of land, the procedures which must be followed by expropriating authorities, and the recourse available to the owners of expropriated land. We highlight a few key differences between the Old Act and the New Act:

Old Act	New Act
<p>Defines "public purposes" as "any purposes connected with the administration of the provisions of any law by an organ of state".</p> <p>(There is no definition for "public interest".)</p>	<p>Defines "public purpose" as "any purpose 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".</p> <p>Defines "public interest" as "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".</p>
<p>For the purposes of inspection and surveillance, allows for entry without consent onto the premises earmarked for expropriation as long as 24 hours' notice has been provided.</p>	<p>If there is no consent from the owner or occupier of the land then the expropriation authorities have to obtain a court order to enter onto the premises for inspection and surveillance purposes.</p>
<p>Mandatory compensation to owner of expropriated property.</p>	<p>Introduces the possibility of expropriation for nil compensation where land is expropriated in the public interest, having regard to certain relevant circumstances, including, but not limited to:</p> <ul style="list-style-type: none"> • where the land is not being used and the owner's main purpose is not to develop the land or use it to generate income, but to benefit from appreciation of its market value; • where an organ of state holds land that it is not using for its core functions and is not reasonably likely to require the land for its future activities in that regard, and the organ of state acquired the land for no consideration; • notwithstanding registration of ownership in terms of the Deeds Registries Act 47 of 1937, where an owner has abandoned the land by failing to exercise control over it despite being reasonably capable of doing so; and • where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land.

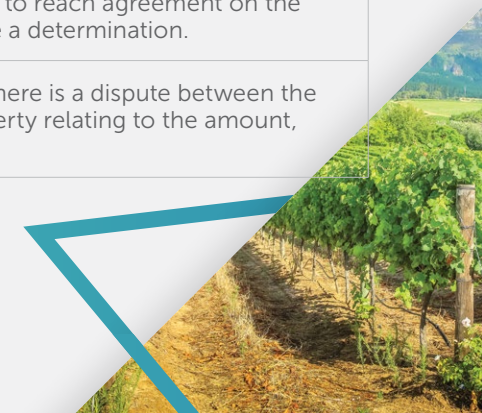
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Old Act	New Act
Provides formula and measuring tools to calculate compensation.	Provides for factors to be considered to determine just and equitable compensation, mirroring the factors listed in section 25 of the Constitution, which are set out above.
Does not specifically provide for the use of a valuer in determining compensation for expropriated property.	Expropriating authority may appoint a valuer to assist in determining compensation for expropriated property. Valuer has extensive powers .
Notice of expropriation served on owner of expropriated property.	Notice of intention to expropriate and notice of expropriation to be served on owner of expropriated property as well as published for public consideration. The notice must contain details as to the expropriation, the intended purpose of the property and how the compensation was determined .
Provides that the expropriating authority may expropriate any property for public purposes .	Provides that the expropriating authority may not expropriate property arbitrarily or for a purpose other than a public purpose or in the public interest .
Expropriating authority may expropriate property on behalf of specific juristic bodies "as if it were required for public purposes".	Expropriating authority may expropriate property on behalf of organs of state if it is for a public purpose or in the public interest.
Expropriated property shall remain subject to all registered rights of third parties (except mortgage bonds) unless such rights have been expropriated from the owner thereof. An agreement has to be reached between the owner and the mortgage bond holder as to how the funds are to be distributed. Failing this agreement, the parties would have to approach the court to determine how the funds are to be distributed.	Expropriated property shall remain subject to all registered rights of third parties (except mortgage bonds) unless such rights have been expropriated from the owner. An agreement has to be reached between the owner and the mortgage bond holder as to how the funds are to be distributed. Should the parties fail to reach agreement or fail to provide such agreement to the expropriating authority within 30 days of the date of expropriation, the compensation funds will be paid to the Master of the High Court to be held in the guardian's fund. If the parties fail to reach agreement on the distribution, then the parties may apply to court to make a determination.
Provides for arbitration or referral to court where there is a dispute between the expropriating authority and owner of expropriated property relating to compensation or the right to use.	Provides for mediation and/or referral to court where there is a dispute between the expropriating authority and owner of expropriated property relating to the amount, time and manner of payment.

This is but the tip of the iceberg, beneath which there are more complex issues to unpack and understand. To find out more, tune in to our webinar on Thursday, 13 February 2025 at 09h00 (CAT) [Register here](#).

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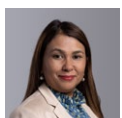
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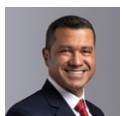
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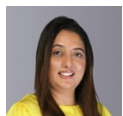
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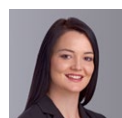
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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