

Expropriation Act – What's Compensation Got To Do With It?

On 24 January 2025, the President of South Africa assented to the Expropriation Act No. 13 of 2024.

This caused some dissent within the Government of National Unity, most notably the Democratic Alliance (DA). The Expropriation Act made news globally and on 7 February 2025 the President of the United States of America signed an executive order specifically referencing this newly enacted Act.

Below, I would like to break down the salient aspects of the Expropriation Act, its place in our society and what lead us to this point. At the end you should be able to come to your own conclusion about whether the opposition to the Act has merit.

The Expropriation Act provides for the following:

- 1) Expropriation of land and other property for public and certain other purposes.
 - a. Expropriation was largely envisaged to assist the state with building public service utilities like roads, railways and universities
- 2) The Minister is empowered, subject to the Act and an obligation to pay compensation, to expropriate any property for public purposes, which expropriation may also be temporary (for a maximum of 12 months).
- 3) The Minister may authorise any person to attend at the property to inspect and assess the potentially expropriated property
 - a. No consent of the owner/occupier is required provided 24-hours' notice is given of the intention to attend at the property
- 4) Should the Minister wish to expropriate, it should serve a clear notice of its intention to expropriate, as well as the offered compensation, upon the owner/occupier.
- 5) Should a party object to the amount of compensation offered, alternatively should no compensation be offered, then the affected party must address written correspondence to the Minister within 60 days of the notice.
- 6) The procedure to be followed by the owner/occupier of expropriated land in accepting/declining the offer is set out, as well as the procedure to be followed in the event where no compensation is offered.

- 7) The procedure to be followed in the event of an unsettled dispute regarding compensation for expropriated land is set out, as well as the procedure for effecting payments pending the finalisation of any compensation disputes.
- 8) It sets out the basis on which compensation is to be determined.
 - a. Primarily a market value based on the concept of a willing buyer and willing seller
- 9) It stipulates which courts have jurisdiction to determine compensation disputes.

The interesting thing is, the **summary above does not refer to the recently enacted Act**, but it actually **refers to the Expropriation Act No. 63 of 1975**, which was still in force and effect until it was repealed by the Act 13 of 2024. Yes, an expropriation Act has been in existence since 9 July 1975, and similar acts are effective globally.

Take a minute and read it again – the **Act No. 63 of 1975 provides for expropriation of property, with or without compensation, for public and certain other purposes** (these certain other purposes are not defined in the Act).

It also refers to outdated Acts which facilitated racial segregation such as the Slums Act No. 53 of 1934, the Unbeneficial Occupation of Farms Act 29 of 1937, the Bantu Trust and Land Act, The Bantu (Urban Areas) Consolidation Act and the Rural Coloured Areas Act.

On 4 February 1997, the Constitution of South Africa took effect. This is widely regarded as a very good constitution, well drafted, and taking the history of South Africa as well as its desired outcomes into account.

Section 25 of the Constitution provides for the following:

- No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- Property may be expropriated for public purpose or in the public interest, and subject to compensation as agreed or decided or approved by a court. Public interest includes the nation's commitment to land reform and property is not limited to land.

- In the event of expropriation, the accompanying compensation must be just and equitable.

Accordingly, let us now look at the newly enacted Act No. 13 of 2024.

The Expropriation Act provides for the following:

- 1) To provide for the expropriation of property for:
 - a. **a public purpose or in the public interest;**
 - b. **to regulate the procedure for the expropriation of property for a public purpose or in the public interest, including payment of compensation;**
 - c. **to identify instances where the provision of nil compensation may be just and equitable for expropriation in the public interest;**
 - d. **to repeal the Expropriation Act, 1975; and**
 - e. **to provide for matters connected therewith.**

This is similar to the previous Act, but instead of referring to “certain other purposes” (which is not defined) it refers to “public interest” which is defined in the Act to include, without limitation,

“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”

which stated commitment is entrenched in Section 25 of our Constitution.

The new Act is intended to bring our laws in line with our Constitution.

- 2) The Minister is empowered, subject to the Act, to expropriate property for public purposes or in the public interest.
 - a. This is similar to the previous Act. However, it adds the following:
 - i. Expropriating authority may not expropriate property arbitrarily or for a purpose other than a public purpose or in the public interest.
 - ii. Expropriation of property may not be exercised unless expropriating authority has attempted but failed to reach

agreement with the owner or holder of a right in property for the acquisition of the property on reasonable terms. The only exception is where expropriation is urgent, in which case expropriation will only be temporary and for a maximum period of 12 months.

- 3) The Minister may authorise any person to attend at the property to inspect and assess the potentially expropriated property.
 - a. This is similar to the previous Act, however, unlike in the previous Act, property may only be entered with written authority of the expropriating authority and the written consent of the owner, or failing consent, a court order authorising entry
 - b. Expropriating authority must also consider all relevant circumstances when deciding whether to expropriate property and must look at various factors.
- 4) It states that should the Minister wish to expropriate, it should serve a clear notice of its intention to expropriate, as well as the offered compensation, upon the owner/occupier.
 - a. The requirements here are similar to the previous Act
- 5) It states that should the parties fail to agree regarding the expropriation, then the disputing party must address written correspondence to the expropriating authority within 90 days (30 more days than the previous Act) of the date of the expropriation notice and request that legal proceedings be instituted to resolve the matter. Alternatively, the disputing party may institute legal proceedings within 180 days of the date of the expropriation notice. Further, any party may approach the court on any matter relating to the application of the Act.
- 6) The procedure to be followed in the event of an unsettled dispute regarding compensation for expropriated land is set out, as well as the procedure for effecting payments pending the finalisation of any compensation disputes.
- 7) It sets out the basis on which compensation is to be determined.

- a. Compensation is determined primarily on just and equitable balance between public interest, interest of those affected and having regard to various relevant circumstances, e.g. current use of property, history of acquisition and use of property, market value of property, extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property, and purpose of the expropriation, which is a reiteration of Section 25(3) of the Constitution.
- b. **The new Act also sets out further instances, together with the above, which should be considered when NIL compensation is contemplated for expropriated land only** (not other property, e.g. movables or rights) in the public interest, that is:
 - i. Whether or not the land is being used;
 - ii. Whether the owner's main purpose is not to develop the land or use it to generate an income, but to rather benefit from the appreciation of the land's market value;
 - iii. Whether the owner has abandoned the land by failing to exercise control over it despite being reasonably capable of doing so; and
 - iv. Whether 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

8) It stipulates which courts have jurisdiction to determine compensation disputes as well as the dispute procedure.

9) It repeals the Expropriation Act No. 63 of 1975.

Taking the above into account, we can summarise the apparent contentious issues below:

1. Does the new Act promote and encourage land grabbing?
 - 1.1. The Act does not promote, justify, encourage or facilitate land grabbing.
 - 1.2. The Act does not promote, justify, encourage or facilitate arbitrary deprivation of property. Accordingly, expropriation cannot be undertaken arbitrarily.
2. Does the new Act identify white property or farm owners for expropriation purposes?
 - 2.1. The Act does not target any racial demographic for expropriation purposes.

- 2.2. The Act does not target any property (e.g. farms) for expropriation purposes.
 - 2.3. The Act mentions race only when referring to a commitment to land reform in order to redress the results of past racial discriminatory laws or practices, as contained in our Constitution.
3. Does the new Act provide for expropriation without compensation?
- 3.1. The Act provides for expropriation without compensation in limited circumstances, which are clearly defined.
4. Do people who dispute an expropriation have avenues to have their dispute adjudicated?
- 4.1. Should a party object to an expropriation of property, they will have various avenues available to have the objection adjudicated.

I think that this matter once again highlights the disconnect between the legal fraternity (which seems largely unphased by the adoption of the new Expropriation Act) and the politicians claiming an egregious infringement of rights.

Links to the two Acts are enclosed below for your perusal in order for you to form your own conclusions – always refer to the source of information:

Expropriation Act No. 63 of 1975

- https://www.gov.za/sites/default/files/gcis_document/201505/act-63-1975.pdf

Expropriation Act No. 13 of 2024

- https://www.gov.za/sites/default/files/gcis_document/202501/51964-expropriationact13-2024.pdf