



# *Pincus Matz*

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ATTORNEYS

## EVICCTIONS

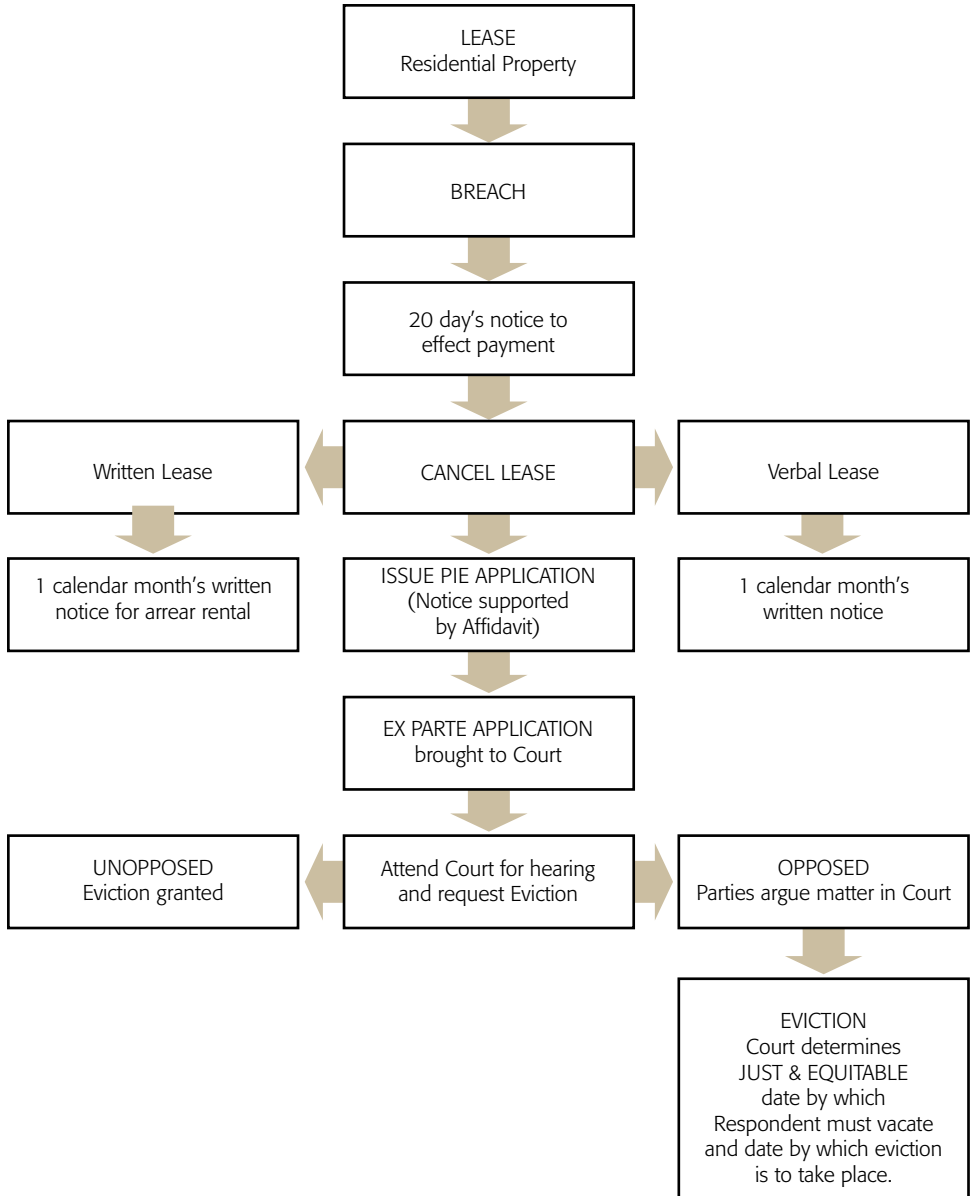
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# The Eviction Process

## RESIDENTIAL



# The Eviction Process

## COMMERCIAL

NOTE: Excludes matters falling under ESTA (agricultural land)

### STEPS

1	Letter of Demand and Cancellation	
2	Institute action for eviction i.t.o. common law by way of summons	
3	Summons served by Sheriff	
4	Defendant has ten days after service of Summons to defend	
	<b>A. IF UNDEFENDED</b>	<b>B. IF DEFENDED</b>
5	Apply for Judgment	Summary Judgment Application brought
6	Order granted	If Summary Judgment unopposed then set-down and obtain order. If opposed, then proceed to Trial
7	Issue Warrant of Execution	Issue Warrant of Execution
8	Sheriff can evict immediately	Sheriff can evict immediately

# EVICTIONS

The Lease Agreement can be verbal or written.

## **Ex Parte Application**

An application without notice to the other party is brought before the Court for it to grant permission to serve notices as stipulated in the PIE Act.

## **Notice**

The PIE Application consists of a Notice in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 – SS4(1) supported by an Affidavit. These notices have to be served on the local authority (Municipality) advising it of the intention to institute action against the unlawful occupant for eviction. The Notices have to be served on the unlawful occupant and all those holding under him or her. The local authority and the unlawful occupant have to be given 14 days' notice of the hearing.

## **Affidavit**

The Affidavit in support of the above Notices has to allege unlawful occupation, give reasons for the requested eviction and why it is just and equitable to evict the unlawful occupant. At the hearing the unlawful occupier (tenant) may attend and put forward reasons why he/she should not be evicted. The Court then has discretion to grant the unlawful occupier time by which to a) vacate and b) the date on which the eviction is to take place if the unlawful occupier has not vacated as per the Court's Order.

## **Court**

Before a Court can grant an eviction it has to consider all the relevant circumstances and be in a position to rule that such an eviction is just and equitable. The owner (Landlord) approaches the Court on the basis of ownership and the unlawful occupation. It is then the occupier who may rely on special circumstances and the duty is on him/her to raise and present these circumstances to the Court. The Court gives cognisance to the rights of elderly, children, disabled persons and households headed by women. The Court may only

grant the eviction after considering all the relevant circumstances.

The Court has a wide discretion in ordering the date on which the unlawful occupier is to vacate and the date on which the eviction order may be carried out if the unlawful occupier has not vacated.

## **Procedure after the order has been granted by the Court**

Once the order for eviction has been granted by the Court, the Sheriff is authorised to evict the tenant by force, if necessary, on the date specified by the Court. If there was a claim for arrear rental and judgment was granted, the Sheriff may attach the unlawful occupier's personal possessions to satisfy this debt.

## **Time - The length of procedure**

On average an unopposed eviction can be effected within three to four months of receiving the instructions. This depends on whether or not the lease has been validly cancelled after the breach of non-payment.

## **Legal Costs**

An unopposed eviction will cost the landlord approximately R 8 000.00 excluding Sheriff's fees which are estimated to be R 4 000.00. The PIE Act does not provide for the recovery of these costs from the defaulting tenant/unlawful occupier.

## **Limit the risk by screening tenants**

It is important to screen prospective tenants carefully to try and minimize the risk of default. Request a copy of the tenants' identity book, do an ITC check (credit check) with his/her permission, request three months bank statements and credit card statements, request references and employment details and validate them, and request at least a 2 month deposit.