

The image features a central green speech bubble with a white outline, pointing towards the bottom left. Inside the bubble, the text "Negotiating on property rights under adverse conditions" is written in a white, sans-serif font. The background is white and decorated with several overlapping circles and lines. Some are solid grey lines, while others are dashed grey lines, creating a dynamic, abstract pattern around the central bubble.

Negotiating on property rights
under adverse conditions

Section 25 of the Constitution

Section 25 deals with the protection of property as a fundamental right and is in line with an established worldwide tradition of human rights' protection.

It contains a negative property guarantee which means that property rights may not be restricted unless certain requirements are met.

The property guarantee therefore allows for state regulation, but protects private property rights through limiting state interference. The basis though remains Agreement., voluntary or "compelled"

The foundation of agreement: a meeting of minds

- Conflict is based on Misunderstanding and/ or Disagreement:
 - ✓ Disagreement is to be resolved
 - ✓ Misunderstanding needs to be avoided (contract based on misunderstanding is void)
- Where an unwilling seller is noted- rights can be tempered through legislation- Constitution and Expropriation Act
- Protecting Ownership- illegal occupation of land governed under amongst other Pie Act and common law
- Formal v Informal, based on willingness of seller, proceedings, based on willingness of seller, possible in both instances- Formal through courts and informal per normal willing and able party negotiation
- Time and Costs vary depending on formal or Informal process followed

Expropriation- “A Compelled Agreement”

Section 25(2): “Property may be expropriated only in terms of law of general application –(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.”

A servitude can be defined as a limited real right registered in the Deeds Office against the title deed of a property in terms of which a burden is imposed on an immovable property restricting the rights, powers or liberties of its owner to a greater or lesser extent in favour of either another person or the owner of another property

Expropriation Act 63 of 75 as amended



Must be for public use



Notice to be served



Response from owner re Compensation



Compensation for property other than a right shall not exceed open market



For a right an amount to make good any actual financial loss caused by the expropriation plus

The Negotiation Process pursuant to Expropriation

Process can be extensive. therefore, critical that the process is correctly programmed and incorporated into the planning process.

Formal in terms of Act can be years, informal therefore negotiating in good faith a lot less time consuming

The negotiation process may involve the following steps if informal:

Initial meeting with the landowner.

The signing of an "option" to secure a servitude

Once the extent of the servitude is confirmed the servitude agreement will be finalised with the individual landowners.

Compensation payments are made when the servitude is registered at the Deeds office.

Once construction is complete and the land rehabilitated to the landowners satisfaction, the landowner signs a "Final Release" certificate.

A common issue that arises with servitudes, is that the servitudes are registered as mentioned herein, but agreements between the parties are not reached regarding aspects such as maintenance and access to the property

If Formal as process in the Act



Issues to
consider and a
practical
approach

- It is an emotive issue- they are suspicious
- Create trust as a platform to engage
- Communication is key
- Record all discussions
- Listen to understand
- Find solutions outside the norm?

Formal negotiation in terms of expropriation



IF A PARTY CANNOT REACH AGREEMENT THE FORMAL
PROCESS STARTS AND THE MINISTER NEEDS TO BE
APPROACHED /SATISFIED THAT FORMAL
EXPROPRIATION IS REQUIRED



NOTICE IS SERVED AND 60 DAYS TO RESPOND ON
PRICE, OR LONGER GIVEN



THEN THE FUN BEGINS

Where the dispute is real on compensation

- Expropriation Act 63 of 1975 stipulates that compensation should be paid with the expropriation of property and for this purpose the value of the property should be taken into consideration, normally requiring a professional valuer's opinion of the value. If the parties cannot agree on the compensation payable, it needs to be resolved by way of arbitration or court proceedings, in which the independent valuer will act as expert witness
- Time therefore is a reality

Eviction and the constitution

- Section 26 of the Constitution - everyone has the right to adequate housing and that the state must take reasonable legislative and other measures, within its available resources, to achieve the gradual realisation of the right. This means that the government must enable access to adequate housing over time and within the limits of its resources. The government is not required to provide housing instantly where it has no resources to do so.
- Section 26 further states that no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the circumstances. The law does not permit arbitrary evictions.

Protecting landowners rights

- Dealing with “squatters”
- **What is a squatter?** A squatter is any person or organisation that continues to occupy a property when they have no legal right do so
- Although squatters do not have the right to unlawfully occupy property, they do have the right to be evicted only after an order of court has been granted, which sets out the terms upon which the eviction can take place in order to ensure that it is just and equitable.
- Pie Act- Residential is the key word
- What is ‘just and equitable’ depends from one situation to the next- 6 month threshold
- the landowner needs to approach a court for an order declaring that it is lawful to evict the unlawful occupier, and this order will not be granted by the court unless the court is satisfied that firstly, the unlawful occupier stands to be evicted in terms of our law and secondly, that the terms of the eviction will be just and equitable to the occupier
- Red Ants?
- So- time is of the essence –act before housing is erected
- Negotiate with chief or person in charge- Court application is expensive and time consuming



PIE Act 19 of 1998

- PIE was promulgated to provide for the prohibition of unlawful occupation and to put in place fair procedures for the eviction of unlawful occupiers who occupy land without permission of the owner or person in charge of such land
- Structures that do not form the function of a dwelling do not fall under PIE (see *Shoprite Checkers (Pty) Ltd v Jardim* 2004 (1) SA 502 (O) at 506E – 507E and *Kanescho Realtors (Pty) Ltd v Maphumulo and Others* and three similar cases 2006 (5) SA 92 (D) at 94F)
- PIE also requires special consideration be given to –
 - the rights of the elderly;
 - the rights of children;
 - the rights of disabled persons; and
 - households headed by women.

Non Residential property

- Common law and possession

Notice

- the notice must comply with the requirements of s 4(5), which are set out below:
- '(a) state that proceedings are being instituted in terms of subs (1) for an order for the eviction of the unlawful occupier;
- (b) indicate on what date and at what time the court will hear the proceedings;
- (c) set out the grounds for the proposed eviction; and
- (d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid.'