

**ADVISORY CONCERNING THE NEW
TREND OF HOME INVASIONS AND/OR
RESIDENTIAL HIJACKING**



A report by AfriForum

August 2022

INTRODUCTION

Property rights have, for the past decade, been an issue of intense discussion in both the media and legal circles. A worrying development was when land grabs suddenly became a repetitive occurrence with property owners and lawyers alike being caught off guard as to how to address the issue and approach courts for proper relief in evicting land grabbers and unlawful occupiers from affected properties.

Now we find ourselves in a new predicament where syndicates have evolved and become wise as to the application of legislation and the unfair onerous burden placed on property owners, in most cases entailing lengthy litigation in order to obtain costly eviction orders. Not to mention the South African Police Service's clear apprehension to act timeously and in accordance with the law and their own internal directives and standard operating procedures to assist property owners before matters get out of hand and require legal intervention.

Organised home invasions and/or residential hijacking syndicates are the new phenomenon we are addressing in this advisory document. They seek to either personally take over and reside on private property, whether occupied or vacant, or blatantly place their own tenants in such properties whilst collecting rental monies from their racketeering.

Whichever shape or form this practice takes, it leaves property owners and lawful occupiers at a disadvantage when it comes to evicting either the syndicates or their tenants. South Africa's current legislative framework makes it extremely difficult to speedily obtain an eviction order. Not only this, but it seems as though these syndicates deliberately oppose any legal proceedings taken against them, even if they have no justifiable defence to put forward. The reasoning behind this practice seems to be embedded in prolonging and delaying the legal process to their advantage. What is worrisome is that these syndicates often have lawyers who willingly provide their services to represent them in court, which would indicate that this is a very rewarding financial business for syndicates who are able to afford legal representation.



Victims of this new trend not only are in a financial predicament when it comes to their legal costs to obtain an eviction order, but whilst your home is unlawfully being occupied and abused for rental income by these syndicates, you are legally bound by the Local Government: Municipal Property Rates Act 6 of 2004 and the Local Government: Municipal Systems Act 32 of 2000 to continue paying rates and taxes, irrespective of the criminal deprivation you are suffering in respect of your property.

This advisory seeks to inform property owners of the dangers of this new criminal practice whilst also informing them of their rights and course of action should they fall victim thereto.

WHAT ARE YOUR RIGHTS?

The starting point concerning a person's rights in respect of property is Section 25 of the Constitution of the Republic of South Africa, 1996. This section provides that no person may arbitrarily be deprived of their property and no law may permit such deprivation. Therefore, any form of home invasion or hijacking of residential property constitutes a form of arbitrary deprivation as envisaged and prohibited by Section 25.

Considering the South African Police Service's (SAPS) mandate in terms of the Constitution, Section 205(3) stipulates that the objects of the SAPS are to prevent, combat and investigate crime; to maintain public order; to protect and secure the inhabitants of the Republic and their property; and to uphold and enforce the law. One would assume that given this constitutional mandate the police have a duty to act when a citizen's property is being threatened; however, it is clear that they often neglect or refuse to adhere thereto when homeowners request urgent assistance to remove home invaders and/or the unlawful occupiers of these residential hijacking syndicates.

The primary piece of legislation which seeks to protect property owners and lawful occupiers from unlawful entering and occupation of property is the Trespass Act 6 of 1959. Section 1 thereof defines the offence of trespassing as the unlawful entering, in whole



or in part, without permission by any person of a property belonging to an owner or lawfully occupied by someone other than the owner. Offenders may immediately be arrested and removed from the property by police, whereafter prosecution may commence to formally charge and convict them of trespassing. If the offenders are found guilty on the trespassing charges, Section 2(2) of the Act grants the same court the power to make an order for the summary ejection of such person from the land or property concerned.

The Criminal Procedure Act 51 of 1977 allows for private individuals to effect an arrest without a warrant. Section 42(3) authorises the owner, lawful occupier or any other person in charge of a property that is the subject of any crime being committed thereon, to arrest the person found on the property committing the offence. This authorisation to arrest should, however, be carefully considered as an unlawful arrest or an arrest carried out with excessive force resulting in the unreasonable injuring of the perpetrator, may lead to civil litigation being instituted against the arrestor (meaning the owner or lawful occupier) for injuries and/or damages suffered. It is preferred that arrests, in this instance, and as far as possible, rather be carried out by police officials to avoid any injury or harm to befall any property owner or lawful occupier.

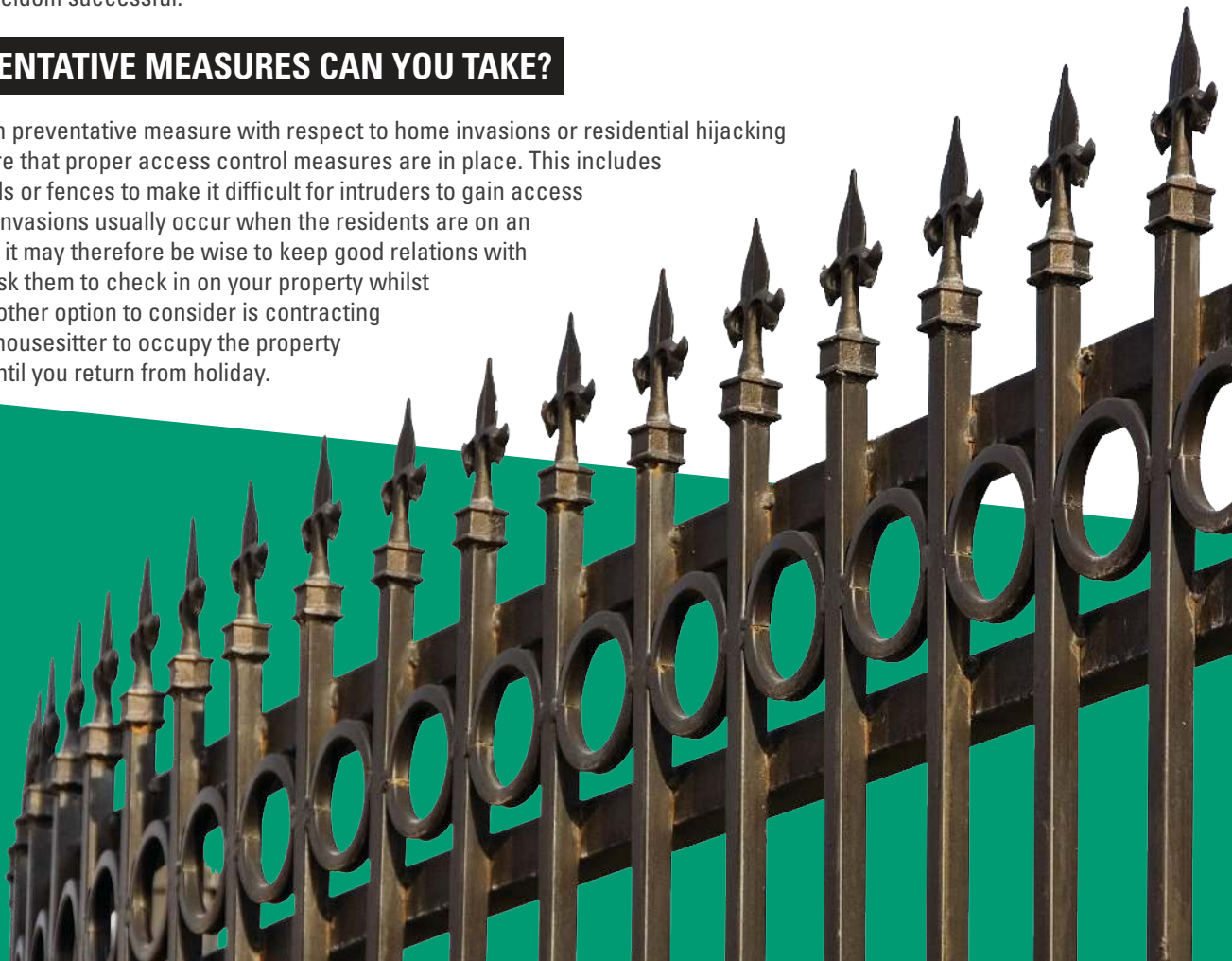
A severe problem arises when trespassers are considered “unlawful occupiers” of property, as they will be afforded legislative protection under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (referred to as the “PIE Act”). An “unlawful occupier” is defined as any person who occupies land without the express or tacit consent of the owner or person in charge, or without any legal right to occupy such land. This effectively means that if any person or persons are deemed to occupy your property, even unlawfully, they will be afforded the protection under the PIE Act, which will require an owner to apply for a court order to formally evict unlawful occupiers from their property.

As mentioned above, residential hijacking syndicates often place their own occupants into properties and receive rental income whilst you are left with the administrative burden to reclaim full ownership and enjoyment of your property. Section 3 of the PIE Act does prohibit the solicitation of money in respect of unlawful occupations, but the enforcement of this provision still requires the property owner to approach a court and enforce this provision.

Section 4 deals with the administrative procedures when applying for an eviction order and the requirement to give notice of any legal proceedings to the unlawful occupiers. Section 5 deals with urgent applications where a property owner seeks urgent intervention from a court to order the eviction of unlawful occupiers where certain circumstances are present, such as imminent danger of substantial injury or damage to any person or property. Whatever the case, once trespassers are deemed “unlawful occupiers” as per the PIE Act, the owner is in most instances burdened with a lengthy and costly legal process to affect an eviction. Once an eviction order is obtained, it will usually instruct the sheriff to proceed with the eviction and appoint any other roleplayers such as the police and/or private security to assist with the eviction. It is important to note that any costs, including that of contracting private security to assist with the eviction, will be borne by the owner of the property. Although the court order can provide that the occupiers evicted will also be responsible for the costs thereof, action against the occupiers for reimbursement of the said costs is seldom successful.

WHAT PREVENTATIVE MEASURES CAN YOU TAKE?

The most common preventative measure with respect to home invasions or residential hijacking would be to ensure that proper access control measures are in place. This includes having sound walls or fences to make it difficult for intruders to gain access to your property. Invasions usually occur when the residents are on an extended holiday; it may therefore be wise to keep good relations with neighbours and ask them to check in on your property whilst you are away. Another option to consider is contracting the services of a housesitter to occupy the property until you return from holiday.



In this way, someone will always be present to inform you of any issues and will be able to contact and interact with the police in your absence as person in control of the property.

With the advancement in technology, property owners also are encouraged to have remote video coverage by way of CCTV cameras or other remote monitoring technology. This will allow you to monitor what is happening on your property via an internet connection with your cellphone, and some devices are even capable of sending notifications when beams are triggered or movement is detected. Pairing this with a subscription with a private security company to also monitor and react to any event which may require urgent intervention is further advisable.

In short, make use of all legal options at your disposal to make invasion of your property as difficult and cumbersome as possible. Criminals love to prey on easy targets and they have a tendency to move to an easier target if the original seems too daunting.

STEPS TO FOLLOW WHEN TRAGEDY STRIKES

In these circumstances, time is of the essence. When a property owner or lawful occupier becomes aware of any intrusion, they need to act as swiftly as possible and inform the SAPS to arrest any trespassers before they are able to erect any structures or enter and unlawfully occupy the premises. A formal charge of trespassing should be laid at the nearest police station and the perpetrators should be apprehended as a matter of urgency.

Unfortunately, the police are often reluctant to act in accordance with their constitutional mandate, whether it be out of ignorance, unwillingness or blatant negligence. The most effective method to get the attention of the SAPS is to physically drive to the nearest police station to lay the complaint. Be sure to make notes of all police officials interacted with by taking down their name, rank and number. If an official refuses to assist in opening a docket, ask for the officer on duty. If the officer also declines, escalate the matter to the station commander. If the station commander also neglects to help, your next course of action will be to approach a competent lawyer to urgently seek legal recourse by obtaining the necessary eviction order to instruct and authorise both the sheriff and local police to evict any unlawful occupiers from the property. If you fail to act timeously, the unlawful occupiers will be protected under the PIE Act, which will result in prolonged and expensive litigation. With the correct paper trail and proof that the owner or legal occupier did everything in his/her power to acquire the assistance of the SAPS and thereafter brought an urgent application against the illegal occupiers without delay, the possibility might exist for a successful claim against the SAPS for the costs so incurred.

CONCLUSION

In summary, prevention is better than cure: being in a position to prevent your property from being invaded or hijacked will be more cost-effective than having to pay the legal costs involved in obtaining an eviction order. It is worrying that the SAPS in most instances are either unwilling or unable (often due to a lack of resources) to properly act against cases of trespassing. However, it seems as though the legislature has become aware of the lack of enforcement when it comes to matters of trespassing, resulting in a promising Bill to have come to fruition, namely the Unlawful Entering of Premises Bill.

Although the Bill is still in its infancy and will probably not be enacted until some time has passed, it is reassuring that a whole section of the Bill (Section 8) deals specifically with the powers of the SAPS when dealing with persons who unlawfully enter upon private property. Not only that, but in its current form, Section 8(4) specifically allows the SAPS to arrest and remove unlawful occupiers from a property, even if they have erected and are currently occupying such structures.

In the meantime, we will have to wait and see what provisions are finally enacted in respect of this Bill. Property owners are unfortunately faced with the current lack of support and the financial burden to protect their property from invasion and hijacking until a substantial legislative intervention is facilitated. AfriForum invites anyone affected by a home invasion or residential hijacking to contact our offices for further assistance and referral to attorneys who will be able to assist in dealing therewith.



