

A GUIDE TO

# ACCESS RENTAL HOUSING

FOR REFUGEES, MIGRANTS AND  
ASYLUM SEEKERS



THIS BOOK WAS COMPILED BY THE CONSORTIUM FOR REFUGEES AND  
MIGRANTS IN SOUTH AFRICA (CoRMSA)



**CoRMSA**  
Consortium for  
Refugees and Migrants  
in South Africa



**OPEN SOCIETY FOUNDATION**  
FOR SOUTH AFRICA



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## **'EVERYONE HAS A RIGHT TO ADEQUATE HOUSING'**

Section 26 of the South African Constitution provides that 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 progressive realisation of this right. Constitutionally, 'everyone' includes asylum seekers, refugees and migrants.

The right to adequate housing is a socio-economic right. Socio-economic rights are rights that give people access to basic needs that are necessary for a dignified life. Therefore, the right to adequate housing is linked to a number of cross cutting rights such as the rights to equality, dignity and public participation. Socio-economic rights are not guaranteed to everyone. However securing such rights for people living in South Africa -- including asylum seekers, refugees and migrants -- would fulfil the state's obligation towards the progressive realization of these rights. The state is required to take measures towards improving access to socio-economic rights, within available resources.



## **1.WHAT IS READILY AVAILABLE FOR ASYLUM SEEKERS, REFUGEES AND MIGRANTS IN SOUTH AFRICA?**

In South African law, the state's commitment to progressive realization of rights, as well the Constitutional right to adequate housing allow eligible applicants to apply for housing subsidies if they meet the requirements.

The National Housing Code provides for the development and implementation of the housing policies and programmes for eligible applicants who are citizens or non-citizens that have permanent residence status who are placed on the housing waiting list. The housing subsidy excludes asylum seekers, refugees and migrants. Rental housing in terms of the Rental Housing Act 50 of 1999 is thus more easily accessible.



## **2 .WHAT PROTECTION DO I HAVE AS A TENANT?**

The Rental Housing Act protects both the tenant and the landlord against unfair practice and exploitation. Chapter 3 of the Act prohibits discrimination based on a number of factors such as race, gender, sex, pregnancy, marital status, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language and birth.

The preamble of the Rental Housing Act states that “no one may be evicted from their home, or have their home demolished without an order of court after considering all relevant circumstances.” This Act was passed to give effect to Section 26(3) of the Constitution.



### 3.WHAT DOES THE ACT SAY ABOUT MY LEASE AS A TENANT?

Section 5 of the Rental Housing Act states that the lease between the tenant and landlord need not to be in writing, but a landlord must, if requested by a tenant, provide a written lease. A lease will be deemed enforceable in a competent court if the landlord provides the tenant with a written receipt for all payments received by the landlord from the tenant.

Section 5 further states that upon cancellation of a lease, should no amounts be due and owing to the landlord in terms of the lease, the deposit, together with the accrued interest in respect thereof must be refunded by the landlord to the tenant, without any deduction or set-off within seven days of expiration of the lease. However, during the lease cancellation, the landlord can without detracting from any other right or remedy of the landlord, deduct from the tenants deposit and interest the reasonable cost of repairing damage to the dwelling and the cost of replacing lost keys.

### WHAT SHOULD BE IN YOUR LEASE?

The landlord is required by law to provide copies of the lease to the tenant and that lease copy must include the following:

- Full names of the tenant and the landlord and their addresses in the Republic of South Africa for purposes of formal communication;
- The description of the dwelling which is the subject of the lease;
- The amount of rental of the dwelling and reasonable escalation, if any, to be paid in terms of the lease;
- State repercussions if rentals are not paid on a monthly basis,
- The frequency of rental payments throughout the lease period, or, if there is no lease period determined the notice period requested for termination of the lease;
- The amount of the rental, and any other charges payable in addition to the rental in respect of the property;
- Obligations of the tenant and the landlord, which must not detract from the provisions of tenant rights or the regulations relating to unfair practice; and
- A copy of any House Rules applicable to a dwelling must be attached as an annexure to the lease.



## 4. BOTH THE TENANT AND LANDLORD HAVE RIGHTS THAT ARE EMBEDDED IN THE RENTAL HOUSING ACT:

### TENANT RIGHTS:

- Not have his/her person or residence searched
- Not have his/her property searched
- Not have his/her possessions seized without an order of the court
- Privacy of communication

### LANDLORD RIGHTS:

- Prompt and regular payment
- Recover debt after a court order has been obtained
- Terminate a lease on grounds not deemed unfair and as specified in the lease agreement
- Upon termination of a lease, receive the property back in good state and repossess the property after a court order has been obtained
- Claim compensation for damages/improvements



## WHERE TO LODGE A COMPLAINT IF THERE IS A RENTAL DISPUTE BETWEEN A LANDLORD AND A TENANT;

### PRETORIA :

012 358 4403  
012 358 4299 F  
Room 215,  
Sanlam Plaza East,  
285 Schoeman Str,  
Pretoria

### JOHANNESBURG :

011 630 5035  
Private Bag x79  
Marshall Town, 2107  
1066 Corner Harrison,  
Pritchard Street, JHB, 2000

### NORTH WEST :

018 384 6201  
018 387 6056  
PO Box 3190  
Mbathe, 2735  
2386 Robert Sobukwe  
Drive  
Unit 1, Mbathe

### CENTURION :

012 358 3898  
012 358 4299 F  
Room C1 1st Floor  
260 Basson Avenue  
Lyttelton, Centurion

### LIMPOPO:

015 294 2000  
015 295 8167 F  
Private Bag x 9485  
Polokwane, 0700  
28 Market Str, 20th Avenue  
Polokwane, 0699

### NORTHERN CAPE:

053 830 9455  
053 831 8016 F  
Private Bag x 5005  
Kimberley, 8300  
9 Cecil Sussman Road  
Kimberley, 8301

### FREE STATE:

053 830 9455  
053 831 8016 F  
Private Bag x 5005  
Kimberley, 8300  
9 Cecil Sussman Road  
Kimberley, 8301

### WESTERN CAPE:

018 384 6201  
018 387 6056  
PO Box 3190  
Mbathe, 2735  
2386 Robert  
Sobukwe Drive  
Unit 1, Mbathe

### MPUMALANGA:

013 766 6200  
Private Bag x 11304  
Nelspruit, 1200  
Mpumalanga Provincial Gov.  
Building, 6 Gov.  
Boulevard  
Riverside Park,  
Nelspruit,  
1200

### EASTERN CAPE:

040 639 1769  
040 609 5198 F  
Private Bag 0035  
Bisho, 5605  
4th Floor, Tyamzarshe Building,  
Bisho, 5605

### KWA ZULU NATAL:

031 336 5300  
031 336 5226  
Private Bag x 9485  
Durban, 4000  
Toleram House 2,  
Aliwal Str  
Durban, 4000



## WHERE TO LODGE A COMPLAINT IF THERE IS A RENTAL DISPUTE BETWEEN A LANDLORD AND A TENANT;

The Rental House Tribunal was established in terms of the Rental Housing to settle disputes between landlords. Asylum seekers, refugees and migrants can use this tribunal, should the need arise. The Rental Housing Tribunal's services are free.

Process from lodging complaint to judgment:

1. Tenant/Landlord will complete a 'complaint form' from the Rental Housing Tribunal:
  - 1.1 A complaint may be lodged via email, post or by handing in the complaint form with annexure (supporting documents such as the lease agreement and rental receipts);
  - 1.2 The complaint is then screened to see if there is an unfair practice in terms of Regulation 9(1)(e) and Regulation 9(2)(f);
  - 1.3 The complaint will go through an administrative process where a reference number will be assigned and referred to a case manager; and
  - 1.4 A case officer will be assigned the case and the tenant/landlord will be called in regarding their complaint.
2. A preliminary investigation is conducted; (this may take up to 90 days)
3. Once the investigation is complete, tenant, landlord and witnesses, if necessary, will be called in for a formal hearing; and
4. A ruling will be made and parties will be informed of this order

A ruling by the Tribunal is deemed to be an order of a magistrate's court in terms of the Magistrates' Court Act. 1944 (Act No. 32 of 1944) and it is binding. The order cannot be appealed; however, a review application may be brought to the High Court.



This booklet was compiled by the Consortium for Refugees & Migrants in South Africa (CoRMSA)

Contact:

Office: 011 403 7560/0032/0033

Fax: 011 403 7559

Email: [info@cormsa.org.za](mailto:info@cormsa.org.za)

87 De Korte Street, 5th Floor, Office No. 501. Heerengracht Building, Braamfontein, Johannesburg.

**Thanks to OLOF Palme for funding the production and printing of this booklet and to Legal Resource Centre for your legal input in developing this booklet**



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