



## SAPOA LEGAL AFFAIRS

### The Expropriation Act

SAPOA has over the last 15 years or so made various representations and submissions on the Expropriation Bill to the National Assembly of Parliament. President Cyril Ramaphosa has now signed the Expropriation Bill into law.

SAPOA believes that while the historical background of land ownership needs to be addressed, it is critically important that South Africa navigates through the sensitivities with the greater vision to ensure that the imbalance is dealt with, and that the economic stability continues to be reinforced.

We also recognise that the pace of land reform and land redistribution, since 1994, has been inadequate, and we support a land expropriation process where the rights of present and future landowners are balanced, with the need to ensure stability and economic growth.

Quite clearly, steps need to be taken to accelerate the pace of land reform and redistribution.

Expropriation is an effective mechanism to achieve land reform and land redistribution. To date, the State has not used the mechanism of expropriation to effect land reform initiatives. It should do so. However, if expropriation is used as a tool to effect land reform, the property sector needs to feel confident that expropriation will not erode their investment in the sector.

The 1975 law that was on South Africa's statute books until last week made provision for such expropriation, and at market value. The problem is that the 50-year-old act was inconsistent with South Africa's 1996 constitution.

Most countries' constitutions require compensation, whether;

- full compensation (Denmark, Norway, Russia, Kenya, the Seychelles and Lesotho);
- fair compensation where a balancing test applies (Egypt, France, Madagascar, Rwanda and Tanzania);
- equitable compensation (the Central African Republic, Congo, Japan, Mozambique, Namibia, Poland, Senegal and the USA); or
- adequate compensation (Botswana, Malta, Uganda and Zambia).

### SOUTH AFRICAN PROPERTY OWNERS ASSOCIATION NPC t/a SAPOA – REG NO 1966/008959/08

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The Constitution, as currently framed in Section 25(3), is flexible enough to provide, in certain exceptional circumstances, for minimal or no compensation being awarded where it is just and equitable to do so. This would be in accordance with norms of international law.

The new law, in prescribed situations, allows certain deductions to be made from what is deemed a property's market value – for example, if past subsidies were paid to the landowner, or if the land has been abandoned – to come to fair value. In very limited circumstances, it is theoretically possible that zero or nominal compensation will be paid. But the State has to justify why that individual is alone bearing the brunt of the public interest, and why this is just and equitable.

Furthermore, the new law signed last week by President Ramaphosa provides clear guidelines for expropriating land – a step-by-step framework for the expropriation process. It now provides for:

1. extensive consultation with affected parties, including financial institutions that hold bonds over the affected property, and persons who have rights to the land but are not landowners.
2. a series of offers and counteroffers as part of the negotiation process;
3. should it be impossible to reach agreement, then compensation must be decided upon by a court of law.

**What is important to clarify is that this is not a blank cheque to expropriate, and neither can expropriation be arbitrary.**

**SAPOA's position:**

- 1.1 **There is a lack of clarity under which circumstances** it would be just and equitable to pay nil compensation. These circumstances are not carefully circumscribed.
- 1.2 **The contention that where land is held for purely speculative purposes**, it could be expropriated for nil compensation. The investment in land so as to generate a capital profit is common and is part and parcel of normal activities within the property sector.

A buy and hold strategy is an internationally real estate approach. If you buy and hold for nil value it will disrupt property market fundamentals and also disrupt capital flows and capital markets.

There seems to be no reason why land held for so-called speculative purposes would qualify for expropriation for nil compensation. There are many landowners whose sole purpose of business is to speculate in land. They do not get the land for free and they have significant holding costs. It seems irrational to indicate, in these instances, the expropriation should qualify for nil compensation.



Nobody is quite sure what the circumstances in which the government would offer “nil” compensation for land would look like, which is one of the points of anxiety.

But what is certain is that the law will be abundantly tested in court.