



ANNEXURE A

THE SOUTH AFRICAN RENTAL HOUSING FRAMEWORK

incorporating the

Constitution of the Republic of South Africa, 1996

(the Constitution),

Rental Housing Act, 1999

(RHA),

Prevention of Illegal Eviction from and Unlawful Occupation of Land

Act, 1998

(PIE Act),

Consumer Protection Act, 2008

(CPA),

Local Government: Municipal Property Rates Act, 2004

(MPRA),

Local Government: Municipal Systems Act, 2000

(MSA),

Magistrates' Courts Act, 1944

(MCA)

and

Criminal Procedure Act, 1977.

A. INTRODUCTION

1. Application of South Africa's civil law system to rental housing

In South Africa, the relationship between a tenant and landlord is regulated by a lease agreement, which is governed by legislation and the common law. The common law gives the tenant and the landlord the freedom to determine the context of their relationship, but legislation limits that freedom by setting minimum standards.

2. Statutes

2.1. The Constitution of the Republic of South Africa, 1996 (the Constitution)

The Constitution provides a new interpretive context for understanding South African rental housing law.

Section 26 (1) of the Constitution provides that everyone has the right to have access to adequate housing.

Section 26 (2) requires the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

Section 26 (3) provides that no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Section 34 gives everyone the right to have any dispute decided in a fair public hearing before a court or independent Tribunal or forum.

The Rental Housing Tribunal (the Tribunal) is an independent Tribunal contemplated in section 34 of the Constitution.

2.2. Rental Housing Act, 50 of 1999 (RHA) and the Rental Housing Amendment Acts

The RHA came into operation on 1 August 2000. It is one of the legislative measures that the state has taken to achieve the progressive realisation of the right to access to adequate housing.

The RHA was amended by the Rental Housing Amendment Act, 43 of 2007 (2007 Amendment Act) on 13 May 2008. The Rental Housing Amendment Act, 35 of 2014, introduces wide-ranging amendments to the RHA. It has been published for information purposes but is some way off from coming into operation. It currently does not apply and does not, therefore, form part of this manual.

2.3. Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (PIE Act)

Most lease agreements contain a clause that the landlord may cancel the lease should the tenant fail to comply with the terms of the lease. Upon cancellation, the landlord may evict the tenant after a court has considered all the relevant circumstances. The PIE Act imposes specific requirements that a landlord must follow to evict a defaulting tenant or unlawful occupier.

As will be seen later in this manual, the Tribunal established under the RHA does not have the power to grant eviction orders. Landlords should instruct an attorney to secure the eviction and comply with the PIE Act's requirements.

2.4. Consumer Protection Act, 2008 (CPA)

2.4.1. Conflict of laws

The CPA (which is not specific to leases) says that if its provisions conflict with any other law, such as the RHA, the law that provides the most protection to the consumer will apply.

2.4.2. Ordinary course of business

The CPA expressly defines residential accommodation as a service, and except in rare cases, therefore covers residential leases. Strictly speaking, the CPA will only apply where the landlord or owner lets out the dwelling in his or her ordinary course of business.

2.4.3. Cancellation of leases

2.4.3.1. CPA

The CPA allows consumers (i.e. tenants) to cancel fixed-term leases for any reason whatsoever by giving the landlord 20 days written notice of the cancellation. The CPA also provides that the landlord is entitled to a reasonable cancellation penalty.

On the other hand, the landlord can only cancel a tenant's lease if the tenant has breached the lease, and after having given 20 business days written notice to the tenant to remedy the breach, the tenant still fails to comply.

2.4.3.2. RHA

The RHA comes into play where a tenant continues to occupy the dwelling after the fixed term in the lease agreement has expired. In such cases, the lease will continue to run on the same terms and conditions contained in the lease, except that the duration of the lease will only be for one month.

If the landlord wants the tenant to leave, the landlord must give the tenant one calendar month's notice. Under the common law, the landlord can only give notice at the beginning (first day) of a calendar month to vacate the premises on the last day of that month.

2.4.4. Leases to be in plain and understandable language

The CPA requires the National Consumer Tribunal or a court to interpret any standard form, contract, or document to the benefit of the consumer. It also gives the consumer the right to receive information in plain and understandable language. Landlords must, therefore, provide leases written in plain and understandable language.

2.5. Local Government: Municipal Property Rates Act, 2004 (MPRA)

2.5.1. Purpose

The MPRA regulates the power of municipalities to impose rates on property.

2.5.2. Rates to be levied on all rateable property

A municipality must levy rates on all rateable property in its area. Social housing institution properties are rateable properties. The owner of a property must pay a rate that a municipality has levied on the property. As owners of properties, social housing institutions are, therefore, bound to pay rates. However, a municipality is not obliged to levy rates on properties owned by the municipality.

2.5.3. Exemptions, reductions and rebates

A municipality may exempt specific categories of owners of properties from payment of a rate levied on their property. It may also grant a rebate or a reduction in the rates payable on their properties. The categories include indigent owners; owners dependent on pensions or social grants for their livelihood; owners temporarily without income; owners of property situated within an area affected by the Disaster Management Act, 2002 or a severe social or economic condition; or owners of residential properties with a market value lower than an amount determined by the municipality.

Social housing institutions should, therefore, explore the possibility of obtaining rates exemptions, reductions or rebates from their municipalities.

2.6. Local Government: Municipal Systems Act, 2000 (MSA)

2.6.1. Purpose

The MSA provides for the core principles, mechanisms and processes necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities and ensure universal access to essential services that are affordable to all.

2.6.2. Owner's liability for service charges incurred by consumers

The MSA requires that a registrar of deeds may not transfer property unless the registrar has received a certificate from the relevant municipality that all amounts owing in connection with the property for rates and service charges in the previous two years have been paid.

The effect of the provision on social housing institutions is that they are ultimately liable for service charges for water and electricity incurred by consumers other than the owner of the property (i.e. tenants).

Social housing institutions must, therefore, ensure that all tenants pay their service charges.

3. Summary

The Constitution provides that no one may be evicted from their home without a court order. The Tribunal is an independent Tribunal contemplated in section 34 of the Constitution to decide disputes between tenants and landlords. The RHA is one of the legislative measures that the state has taken to achieve the progressive realisation of the right in the Constitution to have access to adequate housing.

The PIE Act imposes specific requirements that a landlord must follow to evict a defaulting tenant.

The CPA governs residential leases for dwellings let out in the landlord's ordinary course of business. The CPA applies to fixed-term leases. The RHA comes into play where the tenant continues to occupy the dwelling after the fixed term has expired.

The MPRA regulates the power of municipalities to impose rates on property. Social housing institutions are bound to pay rates. A municipality may exempt categories of owners of properties from payment of a rate, or grant a rebate or reduction in the rates payable on their properties. Social housing institutions should explore the possibility of obtaining a rates exemption, reduction or rebate from their municipalities.

The MSA renders social housing institutions liable for tenants' unpaid service charges for water and electricity.

B. An Overview of the RHA

1. Primary Purpose

The primary purpose of the RHA is to stabilise and regulate the residential rental housing sector through the establishment of a Rental Housing Tribunal (the Tribunal) in each province. The Tribunal must act in terms of the procedural and unfair practices regulations aimed at, amongst other things, settling disputes between tenants and landlords. The establishment of the Tribunal means that tenants and landlords can have their disputes determined without having to go through the complicated and expensive court process.

2. Applies to all residential tenants and landlords in South Africa

The RHA applies to all tenants and landlords in South Africa. The RHA requires a Tribunal to accept complaints from tenants and landlords concerning disputes which fall within the

provincial geographical boundaries within which the Tribunal operates. Parastatals, municipalities, social housing institutions, as well as national, provincial, and local government department entities, which provide rental housing, are subject to the RHA.

3. The Tribunal considers both lawfulness and fairness

The Tribunal is required to determine whether an unfair practice has been committed. The unfair practices regulations may be described as rules that relate to the "Do's and Don'ts" by tenants and landlords. An unfair practice regulation may not conflict with the RHA. The RHA overrides or superimposes its unfair practice regime on the contractual arrangement the tenant and landlord have negotiated. The Tribunal must, therefore, take the RHA and the unfair practices regulations into account when making its rulings.

4. 2007 Amendment Act

The RHA was initially amended by the 2007 Amendment Act, which came into operation on 13 May 2008 and clarified that:

- The tenant could not have his or her possessions seized except through law (by consent or court order) or a ruling by the Tribunal
- The tenant need only pay the costs of a lease if the landlord provides proof that the landlord factually incurred expenses concerning the lease
- The Tribunal does not have jurisdiction to hear applications for eviction orders
- It is an offence to unlawfully lock out a tenant or shut off the utilities to the dwelling without having first obtained a court order
- A Tribunal ruling is deemed to be an order of a magistrate's court and enforced in terms of the Magistrates' Courts Act, 1944
- The Tribunal may:

- Issue spoliation orders. A spoliation is any wrongful deprivation of another's right of possession. For example, the tenant owes arrear rentals, and the landlord switches off the water supply to the tenant's premises without having obtained a court order. The Tribunal order, known as the "*mandament van spolie*," undoes a spoliation by ordering the landlord as the guilty party to return the spoliated thing, being the restoration of the water supply to the tenant's premises

- Issue attachment orders. They are orders authorising the seizure of property to ensure the satisfaction of a Tribunal ruling. The document the Tribunal uses when ordering the seizure is a "writ of attachment" or an "order of attachment"

- Grant interdicts. They are orders prohibiting the tenant or landlord from particular behaviour or actions. For example, ordering a tenant to stop causing a nuisance by regularly playing loud music at midnight.

5. Summary

The RHA applies to all residential tenants and landlords in South Africa. Its application includes parastatals, municipalities, social housing institutions, as well as national, provincial, and local government department entities, which provide rental housing.

The Tribunal considers both lawfulness and fairness when making its rulings. The unfair practices regulations may not conflict with the RHA.

The 2007 Amendment Act clarified that the tenant cannot have his or her possessions seized except by consent, a court order or Tribunal ruling. The landlord may not lock out a tenant or shut off the utilities to the dwelling without a court order. Tribunal rulings are enforced in terms of the Magistrates' Courts Act, 1994. The Tribunal may issue spoliation and attachment orders, and grant interdicts.

C. Essential provisions in the RHA

1. Introductory provisions

1.1. Definitions

The structure of an Act of Parliament begins with the definitions of words and phrases used in the Act. Some of the crucial definitions found in the RHA include:

- **"dwelling"** means a house, hostel room, hut, shack, flat, apartment, room, outbuilding, garage or similar structure which is leased, as well as a storeroom, outbuilding, garage or demarcated parking space which is leased as part of the lease
- **"lease"** means an agreement of a lease concluded between a tenant and the landlord concerning a dwelling for housing purposes
- **"Unfair practice"** means:
 - any act or omission by a landlord or tenant that contravenes the RHA
 - a practice prescribed as a practice that unreasonably prejudices the rights or interests of a tenant or a landlord.

1.2. Summary

A dwelling includes any structure leased for rental housing purposes. The unfair practice definition is important because, as will be seen later in this manual, the Tribunal deals with unfair practices. An "unfair practice" is any breach of the RHA the unfair practices regulations.

2. Promotion of rental housing property

2.1. Responsibility of national government to promote rental housing

The RHA requires the national government to promote a stable and growing market that progressively meets the demand for affordable housing amongst historically disadvantaged persons and to facilitate the provision of rental housing in partnership with the private sector. The national government must also introduce a policy framework, including norms and standards, on rental housing.

The RHA empowers the Minister of Human Settlements (the Minister) to introduce a rental housing subsidy programme or other assistance measures to stimulate the supply of rental housing property for low-income persons.

2.2. Summary

The national government has a responsibility to promote rental housing and must take measures to increase rental housing.

3. Relations between tenants and landlords

3.1. Rights and obligations of tenants and landlords

The RHA provides for the following rights and obligations in the tenant and landlord relationship:

- **Discrimination**

The landlord may not unfairly discriminate against the tenant on the grounds set out in the Constitution. The landlord must act fairly (reasonably, impartially, justly) when considering whether to lease a dwelling to the tenant. Consequently, the landlord may not refuse to rent a dwelling to the tenant because the tenant is black, a woman, pregnant, disabled or has a particular sexual preference

- **Privacy**

The tenant has the right to privacy; not to have the tenant's home, person or property searched or seized; or communications infringed. This right extends to the tenant's family and visitors

- **Payment of rental**

The tenant must promptly and regularly pay the rental or any charges that may be payable in terms of the lease

The landlord may recover unpaid rental or any other amount that is due in terms of the lease after obtaining a ruling by the Tribunal or a court order

The unfair practices regulations preclude a lease agreement from imposing a penalty for late payment of rental, whether or not the penalty takes the form of an administrative charge or any other form other than interest

- **Termination of the lease**

The landlord may terminate the lease on grounds that do not constitute an unfair practice and as specified in the lease. The Constitutional Court has ruled that a landlord must act fairly when terminating the lease

- **Fair wear and tear**

On termination of a lease, the tenant must return the dwelling in a good state of repair, except for fair wear and tear. The wear and tear must be reasonable. The general rule is that if the tenant damages something that would not normally wear out or shorten the life of something that may wear out, then the landlord may charge the tenant a pro-rated cost of the worn-out item

- **Compensation for damages**

The landlord may claim compensation from the tenant for damages caused to the dwelling during the tenancy. The tenant, a member of the tenant's household or the tenant's visitor, could have caused the damage

- **Eviction**

The landlord cannot, where the tenant fails to vacate the dwelling, evict the tenant without a court order

- **Written receipts**

- The landlord must furnish the tenant with written receipts for all payments made to a landlord
- The receipts must be dated and clearly indicate the address, including the street number and further description, if necessary, of a dwelling for which payment is made. The receipts must also set out whether payment has been made for rental, arrears, deposit or otherwise and specify the period for which payment is made

- **Deposits**

- The landlord may require the tenant, before moving into the dwelling, to pay a deposit as agreed between them
- At the end of the lease, the landlord may apply the deposit and interest to pay for all amounts for which the tenant is liable in terms of the lease. These amounts include the reasonable cost of repairing damage to the dwelling during the tenancy and the cost of replacing lost keys. The balance, if any, of the deposit must then be refunded to the tenant not later than 14 days after the tenant has restored the dwelling to the landlord
- Should no amounts be owing to the landlord then the landlord must refund the tenant the deposit, together with the accrued interest, without deducting or setting off any amounts, within seven days of the end of the lease

- **Interest on deposits**

- The landlord must invest the deposit in an interest-bearing account with a financial institution that may not be less than the rate that applies to a savings account with that financial institution
- The tenant may request written proof of the interest accrued, and the landlord must provide such proof

- **Joint inspections and refund of deposits**

- Before the tenant moves into the dwelling, the tenant and the landlord must jointly inspect the dwelling to determine any defects or damage to the dwelling. If they find any, the landlord must repair them, or they may decide to record them on a defects list, which must be annexed to the lease
- Similarly, within three days before the lease ends the tenant and the landlord must inspect the dwelling to determine any damage caused to the dwelling during the tenancy
- If the landlord fails to inspect the dwelling at either the beginning or end of the lease in the presence of the tenant, then such failure is deemed to be an acknowledgement by the landlord that the dwelling is in a good and proper state of repair. The landlord will then not have a further claim against the tenant, and the landlord must then refund the full deposit and accrued interest to the tenant
- If the tenant fails to respond to a request for an inspection at the end of the lease, then the landlord must inspect the dwelling within seven days of the end of the lease to assess any damage or loss during the tenancy. The landlord will be entitled to deduct from the deposit the cost of repairing any damage or replacing lost keys. The balance of the deposit and accrued

interest must then be refunded to the tenant within 21 days of the end of the lease

- The relevant receipts which indicate the costs the landlord incurred to repair the damage or replace lost keys must be made available to the tenant for inspection as proof that the landlord incurred the costs.

3.2. Summary

In a nutshell, the tenant has the right to privacy; receive written receipts for all payments made to the landlord; earn interest on the deposit, and be refunded the deposit and accrued interest less any amounts for which the tenant is liable in terms of the lease. The tenant cannot be evicted without a court order. The tenant must pay the rental and all amounts due in terms of the lease timeously and return the dwelling in a good state of repair except for fair wear and tear.

The landlord may not discriminate against the tenant on any of the grounds set out in the Constitution. The landlord may claim compensation from the tenant for damages caused to the dwelling during the tenant's occupation of the dwelling.

The tenant and the landlord must jointly inspect the dwelling at the beginning and end of the lease. If the tenant fails to respond to the landlord's request for an inspection at the end of the lease, then the landlord must inspect the dwelling. The landlord may deduct from the deposit and accrued interest any amounts for which the tenant may be liable in terms of the lease, which includes the cost of repairing damage or replacing lost keys. The landlord must ensure compliance with the provisions concerning joint inspections and refunds of deposits and accrued interest. The tenant and the landlord may not waive their rights and obligations concerning written receipts, deposits, interest on deposits, joint inspections and refunds of deposits.

4. Leases

4.1. Need not be written

The RHA does not require a lease between a tenant and a landlord to be in writing.

However, a landlord must reduce the lease to writing if the tenant requests the landlord to do so. The written lease must include the following information:

- The names and addresses of the tenant and landlord

- The description of the dwelling

- The amount of rental and reasonable escalation, if any

- Any other charges in addition to the rental

- If rentals are not payable monthly, then the frequency of rental payments
- The amount of the deposit, if any

- The lease period, and if there is no lease period, then the notice period to terminate the lease.

4.2. Defects list

A list of defects that exist in the dwelling at the commencement of the lease must be drawn and attached as an annexure to the lease. By doing so, the tenant and landlord will reduce a potential dispute concerning damage to the dwelling during the tenancy and streamline the refund of the deposit.

4.3. Enforceability of lease agreements

A tenant or landlord may enforce a lease in a Tribunal or competent court. They may, therefore, approach a Tribunal to enforce a term of a lease, such as the non-payment of rental.

4.4. Summary

Lease agreements need not be in writing. The landlord must reduce the lease to writing if the tenant requests the landlord to do so. A list of defects that exist in the dwelling at the commencement of the lease must be attached as an annexure to the lease agreement. The tenant or landlord may approach the Tribunal or a competent court to enforce a term of the lease agreement.

5. Rental Housing Tribunal

5.1. Establishment, independence, decision-making and support staff

The RHA gives to the member of the Executive Council in each province responsible for human settlement matters (the MEC) a discretion to establish a Tribunal. The Tribunal must fulfil the duties the RHA imposes on the Tribunal. It must be independent, impartial and take decisions by consensus. Where the Tribunal cannot reach consensus, then the decision of a majority of the members of the Tribunal becomes the decision of the Tribunal. Where there is an equality of votes on any matter, then the person presiding at the Tribunal hearing will have a casting vote in addition to that person's deliberative vote.

To assist the Tribunal in performing its functions, the Tribunal has a support staff who are appointed subject to the laws governing the public service.

5.2. Summary

Every MEC may establish a Tribunal. The Tribunal must be independent and impartial. The Tribunal must take decisions by consensus failing which the decision of a majority of the members of the Tribunal becomes the decision of the Tribunal.

6. Dispute resolution by the Tribunal

6.1. Complaints

The Tribunal is available free of charge to a tenant or landlord, or group of tenants or landlords, or interest group to lay a complaint about an unfair practice.

6.2. Methods used to resolve complaints

6.2.1. Informally by agreement

The Tribunal support staff must first investigate the complaint to determine whether the complaint concerns a dispute about an unfair practice and if so, try to resolve it informally by agreement between the parties to the complaint.

6.2.2. Mediation

If the parties cannot resolve the complaint by agreement, then in almost all instances, the complaint should be referred to mediation.

Mediation is a process in which an independent third party (who may be a member of the Tribunal, a member of the support staff, or any person deemed fit and proper by the Tribunal) helps the parties to a complaint to try to settle the dispute.

In some instances, it may be appropriate to refer the complaint directly to the Tribunal to make a ruling. For example, where the complaint must be resolved urgently through a ruling of the Tribunal.

6.2.3. Adjudication by the Tribunal

Where mediation fails, the complaint is referred to the Tribunal for a hearing. After the hearing, the Tribunal must decide whether an unfair practice exists and make a ruling. The Tribunal has broad powers to make whatever ruling it sees fit that is just and fair. The Tribunal may, therefore, make orders for payment of rentals.

The Tribunal may:

- Make rulings that compel a person to stop an unfair practice
- Order the reinstatement of a tenant locked out of a dwelling without a court order. This order is known as a spoliation order
- Attach property to cover unpaid rental or services
- Grant interdicts
- Make settlement agreements concluded at mediation rulings of the Tribunal.

The Tribunal also has the power to:

- Refer the complainant to an appropriate forum where the complaint falls outside of the Tribunal's jurisdiction
- Summon a landlord, tenant, managing agent, municipality, expert or relevant person to appear before the Tribunal and answer questions or produce any documents concerning a complaint before the Tribunal
- Where appropriate, require the Tribunal's inspectors to conduct building inspections and provide written inspection reports.

6.3. Costs orders

The Tribunal may make a ruling for costs that is just and equitable.

6.4. Enforceability of Tribunal rulings through the magistrates' courts

The Tribunal rulings are considered orders of a magistrate's court and enforced through the magistrates' courts. The rulings are enforced by following the prescribed procedures in the magistrates' courts.

6.5. Mediation agreements

The Tribunal may, with the consent of the parties, make an agreement concluded at mediation a ruling of the Tribunal. The ruling is enforceable through the magistrates' courts.

6.6. Eviction orders precluded

The RHA specifically precludes the Tribunal from hearing applications for eviction orders. This provision accords with the Constitution, which provides that one may not be evicted from one's home without a court order.

6.7. Summary

The Tribunal must investigate a complaint and resolve it either informally, through mediation or a Tribunal ruling.

The Tribunal may make a wide range of rulings, which must be just and equitable, concerning an unfair practice. The Tribunal rulings include costs orders and making agreements concluded at mediation rulings of the Tribunal. The Tribunal may not hear applications for eviction orders. Tribunal rulings are enforceable through the magistrates' courts.

7. Rental determinations

7.1. The Tribunal's power to make rental determinations

The RHA provides that a ruling may include a determination regarding the amount of rent to be paid. When the Tribunal makes a rental determination, which must be just and equitable, it is required to consider:

- The prevailing conditions of supply and demand

- A realistic return on investment
- Norms and standards, and other measures introduced by the Minister in terms of the policy framework on rental housing.

7.2. Summary

A ruling may include a determination regarding the amount of rental to be paid.

8. Rental housing information offices

8.1. Establishment is discretionary

The RHA provides that a local authority may establish an information office. The purpose of the information office is to advise tenants and landlords of their rights and obligations concerning dwellings within a local authority's geographical borders.

8.2. Appointment of officials

A local authority may appoint officials to carry out any duties of the information office. The appointments must be subject to the laws governing the appointment of local government officials.

8.3. The Tribunal's powers

The Tribunal has the power to require the information office to:

- Submit reports to the Tribunal concerning enquiries and complaints the information office has received
- Advise the Tribunal on any matter concerning a dwelling or complaint the information office has received

- Submit reports to the Tribunal on any matter concerning the administration of the RHA.

It follows that the Tribunal has broad powers to require information from the information office.

8.4. Functions of the information office

The functions of the information office are to:

- Educate, provide information and advise tenants and landlords concerning their rights and obligations
- Advise disputing parties on resolving their dispute
- Refer parties to the Tribunal
- Comply with a Tribunal request
- Keep records of enquiries received by the information office and submit quarterly reports to the Tribunal.

8.5. Summary

A local authority has the discretion to establish an information office. The functions include educating, providing information, and advising tenants and landlords about their rights and obligations in terms of the RHA. The information office must also refer parties to the Tribunal, keep records of enquiries, and submit quarterly reports to the Tribunal.

9. Regulations

9.1. The MEC's power to make regulations

The RHA initially empowered the MEC to make procedural and unfair practices regulations. Not all the MECs have made regulations. The 2007 Amendment Act sought to give the Minister the power to make those regulations but only partially amended the relevant provisions of the RHA. Consequently, the Minister was not able to make those regulations.

9.2. Procedural regulations

The RHA provides for the making of regulations concerning the:

- Procedures and manner in which the Tribunal must conduct its proceedings
- Notices to be given by the Tribunal in the performance of its functions, powers and duties
- Functions, powers and duties of inspectors.

9.3. Unfair practices regulations

The RHA provides for the regulation of the rental housing sector through the establishment of unfair practices regulations. The Tribunal has been established to deal with unfair practices. We have seen that an "unfair practice" is any breach of the Act or unfair practices regulations. The unfair practices regulations prescribe unfair practices not provided for in the RHA concerning, amongst others:

- Lease agreements
- Changing of locks
- Deposits
- Maintenance

- Damage to property
- Unlawful evictions
- Utility (municipal) services
- Non-payment of rental
- Nuisances
- House rules
- Receipts
- Demolitions and conversions
- Evictions
- Municipal services
- Intimidation
- Nuisances
- Tenants committees
- Forced entry and obstruction of entry.

9.4. Summary

The procedural regulations concern the procedures and manner in which the Tribunal must conduct its proceedings, notices to be given by the Tribunal, and the functions, powers, and duties of inspectors.

The unfair practices regulations concern practices relating to a wide range of practices from lease agreements to changing of locks to maintenance to receipts, amongst others.

10. Offences and penalties

10.1. Offences

The RHA provides that it is an offence to:

- Not appear before the Tribunal when summoned
- Not provide materials requested by the Tribunal
- Provide false documents to the Tribunal
- Make false or misleading statements to the Tribunal
- Not comply with a ruling of the Tribunal
- Cut off services or lock a tenant out of the property without a court order
- Contravene any regulation

10.2. Penalties

Upon being found guilty of such an offence, a person will be liable on conviction to a fine or imprisonment or to both a fine and imprisonment. The person must be prosecuted under the Criminal Procedure Act, 51 of 1977, and convicted by a criminal court.

10.3. Summary

The RHA lists numerous offences. A person found guilty in the criminal courts may face a fine or imprisonment or both a fine and imprisonment.

11. Appeals and reviews

11.1. The difference between 'appeal' and 'review'

- **Appeal**

An appeal in the wide sense is a complete rehearing of the case with or without additional evidence or information.

An appeal in the ordinary strict sense is a hearing on the merits of the case. The hearing is limited to evidence or information on which the decision under appeal was given. The only determination is whether that decision was right or wrong.

- **Review**

A review is a limited rehearing with or without additional evidence or information to determine whether the person who decided the case exercised his/her powers and discretion honestly and accurately.

11.2. High Court's powers to review Tribunal rulings

The RHA provides for the review of the Tribunal's proceedings before the High Court. However, as seen from the definition of a review, the High Court's powers to correct a ruling are limited. Generally, a High Court will only interfere with the Tribunal's ruling if it was unfair; irrational; based on a legal error; or if the Tribunal acted beyond the powers given to it by the RHA. The High Court will typically, if it sets aside a ruling, send the case back to the Tribunal for the Tribunal to hear the case again and make a new ruling taking into account the reasons the High Court gave for setting the old ruling aside.

11.3. Summary

A ruling of the Tribunal is reviewable in the High Court.

D. Conclusion

The Tribunals across South Africa are bridging South Africa's past and present. While they have achieved much since their inception, their exponential growth shows that their

work in giving meaning and content to the right to access to housing as set out in section 26 of the Constitution is just beginning. The information offices have an enormous role to play in assisting the Tribunals to meet their objectives.

The Tribunals and information offices in the provinces must work together and release the seeds of creative energy within them to ensure that the rights enshrined in the RHA are given meaning in the everyday lives of tenants and landlords in South Africa.

