



Guide to the Law and Best Practice in **ACCOMMODATION** in the South African Fruit Industry



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Information provided in this Guide should therefore not serve as alternative to legal advice.

Where you are unsure of the interpretation of any piece of legislation, or if apparent ambiguities or contradictions exist, it is best to seek legal advice or contact the relevant Government Department.

We welcome your comments with regard to the technical content and general user-friendliness of the Guide, which will be updated from time to time.

Please forward these to Colleen Chennells at chennell@iafrica.com

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INTRODUCTION

The formal agricultural sector provides employment for approximately 700,000 employees, including seasonal and contract employment. Unlike most other countries internationally the provision of accommodation for permanent and seasonal employees is a common phenomenon on South African farms, even though there is no legal requirement to do so. This is especially so in the more labour intensive sectors like the fruit industry, but the number of housing units has dropped in recent years and few new buildings are being erected. While the standard of accommodation on some farms is often criticized it is recognized that there is very little guidance on standards for buildings that already exist on farms. It is acknowledged that the South African National Building Regulations govern the construction of new buildings and alteration of existing buildings, and therefore reference to these Regulations has been included in this document for guidance purposes only.

This document is a Guideline on accommodation on farms and has been developed as a useful resource for producers. It also provides a comprehensive checklist as an addendum that can be used to do an assessment of housing and accommodation facilities.

A brief summary of the Extension of Security of Tenure Act (ESTA) is included as a guide to residential rights and responsibilities. While this does not cover qualitative aspects of accommodation, such as those included in building regulations and Municipal by-laws, it is important for producers to understand the context of ESTA. The Guide can be downloaded off the FSA Ethical Trade Programme website: www.fruitsa-ethical.org.za.

We hope you will find this resource useful!

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CHECKLIST ON EMPLOYEES' ACCOMMODATION

THE LEGAL FRAMEWORK

1

There are a number of laws and regulations governing various aspects of employees' accommodation on farms. Of particular importance for the purposes of this Guide are the South African National Building Regulations that govern the construction of new buildings and alterations of old buildings. There is, however, very little guidance on standards for existing buildings on farms.



The legal aspects to the Guide to Accommodation on Farms were drawn from the following laws and standards:

- *Occupational Health and Safety Act (1993);*
- *Environmental Regulations for Workplaces, 1987:(2281);*
- *General Safety Regulations (1993);*
- *National Environmental Management: Waste Act (2008), Art. 21-23*
- *The Extension of Security Tenure Act (ESTA) (2007);*
- *Sectoral Determination: 13 Farm Worker Sector (2009);*
- *South Africa mining accommodation standards;*
- *South African National Standards (SANS) and South African building regulations (Building Standards Act (1977)*

There is also reference in this Guide to international documents which can be used as a guide to best practice. These include:

- *Employees' accommodation: processes and standards. A guidance note by International Finance Corporation (IFC) and European Bank for Reconstruction and Development (EBRD). (2008);*
- *International Labour Organization, Employees Housing Recommendation (1961);*
- *SA 8000 Accommodation guidelines;*
- *International Covenant on Economic, Social and Cultural Rights*

Even though there is no legal obligation on any employer to provide accommodation, where accommodation is provided as part of an employment contract, management should accept responsibility for ensuring that the accommodation is adequate, safe and hygienic and meets any requirements of law.

Guidelines for assessing site housing and accommodation:

- Use the Checklist provided as an addendum at the back of this guide to conduct a self-assessment of the accommodation you currently provide. Being honest in this assessment will enable you to gain maximum value from this process.
- Use the results of the self-assessment to identify areas where improvement is needed.
- Draw up an improvement plan – set yourself clear objectives and remember: objectives should always be SMART – Specific; Measurable; Achievable; Realistic and Timed.
- Document your improvement plan. This gives a good indication to any external stakeholders that you are committed to ensuring that your accommodation meets any legal requirements and also establishes accountability.

It is important to remember that this process is not about passing or failing. It is about a genuine evaluation of current status with a commitment to improvement where necessary.

GUIDELINES TO THE LAW AND BEST PRACTICE FOR ACCOMMODATION ON FARMS

2

This section provides guidelines on the location, construction and management of on-site employees' accommodation. Accommodation described in this Guide refers to two types of housing: family dwellings and communal accommodation.

It consists of two parts:

- A. General living facilities
- B. Communal living facilities



A. GENERAL LIVING FACILITIES

Where accommodation is provided it must be clean, safe and secure and meet the basic needs of people living in it.

1. LOCATION

What do the laws and regulations say?

When building new living facilities, this should not adjoin any production areas, for example, a chemical storage area, workshop or cropping area or any other area which could threaten the health, safety or welfare of the residents. For already existing buildings that might be a threat to the health and safety of residents, look at 'What is recommended?' later in this section.

Measures should be in place to protect employees and their families living on the farm from exposure to chemical sprays.

There must be a clearly visible access route to the living facilities for the purposes of firefighting and rescue. No building should be erected on a site unless the site provides access to local authority fire services.



It is important to have systems in place to ensure living facilities are clean and safe in order to avoid safety hazards and to protect employees from disease and illness. In cases where employee accommodation is already established, a risk assessment should be undertaken to identify any areas which may be a risk to the health and safety of the residents. For example, where living facilities are close to production areas there should be controls in place to minimize risk of exposure to chemical sprays.

These could include:

- (a) A physical barrier between the production area and living area.
- (b) A buffer zone between the living and production area.
- (c) Informing residents when spraying will take place in the area.
- (e) Designing and constructing living facilities to minimize risk, for example, have non-opening windows on the side facing the production site.
- (f) Informing residents of the dangers of chemicals and of the plan of action when spraying takes place and/or have access to medical assistance and health checks.

If you are considering establishing new accommodation facilities, it is recommended that you do a comprehensive environmental impact assessment beforehand.

2. GENERAL CONDITIONS OF LIVING FACILITIES

What do the laws and regulations say?

Housing must be safe and hygienic.

Living facilities must be built with suitable materials and be structurally sound.

The Sectoral Determination 13 for Farmworkers prescribes certain minimum housing requirements for employers if deductions for accommodation are made from farm employees' wages. These include:

- A roof that is durable and waterproof
- Glass windows that can be opened
- Electricity inside the house if the infrastructure exists on the farm
- Safe water available inside the house or close to the house (not more than 100 metres from the house)
- A flush toilet or pit latrine is in or in close proximity to the house
- The house must not be less than 30 m² in size.

DEDUCTIONS FOR ACCOMMODATION:

Family Housing: The deduction for housing may not exceed 10% of the primary employee's wage (usually the highest earning employee in a family on the farm) and may only be made if electricity is provided free of charge.

Communal accommodation: Where more than two workers live in communal accommodation, the maximum deduction that the employer may make in total in respect of all the farmworkers who live in that accommodation is 25% of the applicable minimum wage payable to an individual farmworker. For example, if the current minimum wage is R1 503.90 per month, where 10 employees are living in communal accommodation, the maximum amount that can be charged will be 25% of R1 503.90 divided by 10 employees, which equals R37.60 per employee per month.

What is recommended?

Accommodation provided to employees as part of their employment contract must be fit for purpose.

This means that buildings should be safe, structurally sound, made of materials that are durable and water proof, and have amenities (for example, access to water and electricity – the latter if it is available on the farm) and facilities (for example, toilets and ablutions) that provide basic needs for residents.

If no deduction is made for accommodation then the employer can charge for electricity.

Many sites use a pre-paid meter as a means of enabling employees to manage their use of electricity.

The following is also recommended:

- A ceiling unless there is no need for this because of the design and construction of the roof, for example, a thatched roof or pitched roof with exposed beams, etc.
- Doors
- The building should be weatherproof, which means it should be able to protect residents from wind, rain, rising damp, etc.
- Suitable flooring that can easily be kept clean and is durable.

3. ASBESTOS IN LIVING FACILITIES

What do the laws and regulations say?

Asbestos used in existing living facilities must be in good condition and not damaged. There must be a written maintenance plan available for asbestos where it is used in employee living facilities.

Reference: Occupational Health and Safety Act, 1993; Regulation 155); National Building Regulations and Building Standards Act (1977), Art. 4, 10 and 14; - Asbestos Regulations – Regulation 155

What is recommended?

- Identify all areas on the premises where asbestos is present, the condition of the asbestos, and areas that need attention. Mark the areas where asbestos is present on your site map and the condition using colour coding, for example: Red = poor condition/needs immediate attention; Orange = average condition/needs maintenance; Green = good/acceptable condition; no immediate work required.
- Follow the regulations when handling asbestos. If you're unsure how to handle it, get advice from authorized service providers.



- Include asbestos management in your Health and Safety risk assessment and develop a maintenance plan.
- Make sure your employees are aware of the risks linked to asbestos and that they understand your policy regarding the handling of asbestos.

4. DRAINAGE AND SEWAGE

What do the laws and regulations say?

Wastewater treatment, effluent discharge as well as solid waste treatment and disposal must comply with local effluent discharge standards. The waste disposal system should be designed to prevent contamination of any water bodies.

Septic tanks and conservancy tanks should be constructed to prevent contamination of water supplies by leakage, spillage or from subsoil water.

Reference: - SANS10252:2004; - SANS 10400: Part P (Waterborne sewerage) and Part Q (non-waterborne sewerage)

What is recommended?

Drainage and sewage systems currently in place must be adequate and in good working order. In other words there should be no visible leaks and/or standing water, no blocked drains/toilets/traps, etc.

The presence of stagnant water around living facilities is a breeding ground for disease and is a health and safety risk.

Staff should be informed of the proper use of the facilities provided.

If you are building new facilities or upgrading existing ones, it could be useful to consult with your staff and find out the most acceptable type of facilities.

5. INSULATION, VENTILATION AND LIGHTING

What do the laws and regulations say?

INSULATION AND VENTILATION There must be sufficient insulation and ventilation as follows:

- Windows must be made of glass, not be left broken and should be able to open and close.
- Doors in the living facility should be in good condition and able to close properly.
- Windows should not be sealed off in any way that stops ventilation, natural light or creates a fire risk.
- Material used to build the house should not be an extreme conductor of heat or cold (for example, steel containers), or get very hot or cold. If this is a problem, then steps should be taken to prevent the extreme conditions, for example, use foamalite lining or a wooden ceiling, and/or air extractors (often used in steel containers).

- Communal living areas should be ventilated, either by natural or mechanical means, in such a way that the air breathed by employees does not endanger their safety.

LIGHTING There should be natural and artificial lighting in living facilities, including communal living areas, which includes:

- windows, which must provide sufficient natural lighting.
- artificial lighting including in the toilet and shower areas.
- all sources of lighting must be in a safe working condition.

Reference: SANS 10400: Part O (Lighting and Ventilation); The Environmental Regulations for Workplaces, 1987:2281 (Regulation 3 annexure for Lux values)

What is recommended?

The accommodation policy (and Housing Agreement signed by management and employees) should state who is responsible for repairing broken windows and/or paying for the repairs. Where windows are broken, it is recommended that these not be boarded closed as they are an important source of both light and ventilation.



Where employees use gas/paraffin burners poor ventilation can be dangerous and threaten lives.

Although there are alternative materials available to substitute glass, for example clear Perspex, it is advisable to get approval from the Department of Labour before installing these alternatives, as the law requires glass to be used.

6. WATER AND WATER STORAGE

What do the laws and regulations say?

- There must be an adequate supply of potable water always available to employees at their living facilities.
- Drinking water should meet the South African National Standard for drinking water and be regularly tested.
(Reference: SANS 241:2006)
- Water tanks used for storage of drinking water must be constructed and adequately covered to prevent the water from becoming polluted or contaminated or allow for seepage from the soil into the tank.
- Disused chemical containers should not be re-used and should not be used at living facilities to store or collect water, or for drinking, cooking or washing. It is acknowledged that empty chemical containers and their re-use are extremely difficult to manage, especially where running water is not readily available. It is therefore very important to develop a sound management system to prevent this situation.

What is recommended?

International standards recommend a minimum of 80 litres per person per day.

ASSESSING RISK LEVELS OF WATER

Do a risk assessment to determine the risk levels of the water available. Keep records of this and review it regularly or when there are significant changes. The risk assessment should consider the following:

- Source of the water – for example, borehole or river
- Method of abstraction – for example, pumped through piping or gravity through canals



- Environment of source – for example, abstracting water from a river downstream from an informal settlement will increase the risk level when compared to abstracting water from a river in a remote area
- Storage of water – for example, closed tanks or open reservoir
- Presence of any filtration / purification systems
- Impacts of seasonality on water source – for example, rivers and streams in a summer rainfall area might need to be assessed more frequently during winter months when flow rates are lower.

Where more than one source of water is available or used in different situations, for example, in pack houses, the source of drinking water needs to be clearly identified by means of signage and/or colour coding.

7. WASTE WATER AND SOLID WASTE

What do the laws and regulations say?

Waste water, sewage, and other waste materials must be properly discharged with no major impact on people living at the facility, or on the environment or surrounding community.

Reference: SANS 10400: Part P; SANS 10252:2004

RUBBISH BINS AND COLLECTION

- All accommodation areas should have containers for litter that is discarded by the residents.
- Litter must be removed before it becomes a nuisance, or causes a negative impact on the environment
- Waste must be managed in such a way that it does not endanger health or the environment or cause a nuisance through noise, smell, sight or dispersed by the wind.

Reference: National Environmental Management: Waste Act (2008), Part 2: section 16 and Part 5: section 21

MANHOLES Manholes must be covered and must not be a health and safety risk to people living in the area.

PEST CONTROL There must be adequate measures in place for protection from animals that carry diseases.

What is recommended?

RUBBISH BINS The number, size and type of waste bins should be determined by various factors including the number of residents living in accommodation, frequency of waste collection and where the bins are located (for example, preventing access by vermin, proximity to living/eating areas, etc).

PEST CONTROL Pests are a source of disease and sickness and therefore need to be controlled.

The type and level of controls will differ from place to place but factors such as the climate (for example, warm, humid coastal conditions or hot, dry arid conditions), type and quantity of waste generated, waste storage and collection systems (for example, closed or open containers) should be considered when developing a pest control plan.



B. COMMUNAL LIVING FACILITIES

Management should ensure that the standards of communal living facilities allow employees to rest and maintain good standards of hygiene, and that the facilities are adequate for the number of residents living there to avoid overcrowding.

1. GENERAL CONDITION OF SLEEPING FACILITIES

What do the laws and regulations say?

MAINTENANCE OF SLEEPING AREA Rooms where employees sleep must be kept in a good condition.



MALE AND FEMALE SLEEPING AREAS There must be separate rooms for males and females except in cases where provision is made for family accommodation.

ACCOMMODATION SPACE There must be adequate space for employees living in communal rooms. This should be an average of 5 square metres per person and the ceiling must be a minimum height of 2.10 metres. Consult with the Department of Labour to ensure that the principle of 'adequate space' is provided for. The guide should be that the space allocated should not be a risk to the health, safety and well being of the residents. *Reference: South African National Building Regulations and Building standards Act, No 103 of 1977; Section A21*

What is recommended?

Rooms must be aired and cleaned on a regular basis, have floors that can easily be cleaned, and have doors and windows that can be locked if necessary.

There should be clear rules and guidelines, for example: definitions of "singles" quarters and "married/partner" quarters in the housing policy.

2. SLEEPING ARRANGEMENTS AND STORAGE FACILITIES

What do the laws and regulations say?

BEDS AND MATTRESSES There must be a sufficient number of beds for employees living in communal rooms. There should be a separate bed and mattress for each employee where the mattress is provided free of charge. If employees are required to pay for the mattress the mattress then becomes the employee's property.

FLOOR SPACE FOR NUMBER OF BEDS There must be enough floor space for the number of beds/mattresses required in communal rooms (not less than 5 square metres per person).

STORAGE FACILITIES Every employee, excluding office employees, should have a personal facility for safekeeping where clothes or other personal items can be kept safely and in a good condition

What is recommended?

BEDS AND MATTRESSES South African law does not make provision for bunk beds in hostel accommodation, but international standards recommend that two employees who are provided with bunk beds must be provided with floor space of not less than 5 square metres per person.

For safety reasons, it is recommended that the minimum space between beds/mattresses should be no less than 1 metre.

Where double bunks are used there should be enough clear space (at least 0.7 metres) between the lower and upper bunk of the bed.

STORAGE FACILITIES There is no prescribed form for storage facilities and this will differ from one situation to another. As a guide, in hostel-type accommodation where employees share living space with other employees each employee should be provided with a lockable storage unit



3. TOILETS AND WASHING FACILITIES

Adequate toilet and washing facilities should be provided so that employees can maintain a good standard of personal hygiene but also to prevent contamination and the spread of diseases which result from inadequate facilities.

TOILETS

What do the laws and regulations say?

NUMBER OF TOILETS As a guide for the workplace, the building regulations recommend the number of toilets required is at least 1 toilet per 8 males and 2 toilets per 8 females. *Reference: SANS 10400 – Part P; Section 4.11 – Table 5.*



TOILET FACILITIES Toilets should be cleaned regularly and have the following facilities:

- a roof that does not leak and a door that locks
- adequate ventilation – windows or other acceptable means of ventilation in the toilet
- partitioning to ensure privacy
- adequate natural or artificial lighting
- easy access and in the case of outside toilets they should not be located more than 60 meters from the living facility
- appropriate chemicals for pit toilets to promote decomposition
- hand washing facility near to the toilet

SHOWERS AND BATHROOMS

What do the laws and regulations say?

There should be one bath/shower per 8 people living in the facility. *Reference: SANS 10400 – Part P; Section 4.11 – Table 5.*

Shower and/or bath facilities should be kept clean and hygienic, in good working order, separated by gender and clearly marked according to gender, and equipped with running water. *Reference: SANS 10400 – Part P; Facility Regulation 1593.*

Sanitary and toilet facilities should include all of the following: toilets, urinals, washbasins and showers.

What is recommended?

Facilities should be constructed of materials that can easily be cleaned and should be designed to provide employees with adequate privacy, including partitions and lockable doors to ensure privacy.

As a guideline it should be noted that international standards state hot and cold running water should be provided.

4. COOKING AND LAUNDRY FACILITIES

What do the laws and regulations say?

In cases where employees cook their own food, cooking space must be provided separate from the sleeping area. Canteen/ cooking facilities should be kept in a clean and sanitary condition.

Management should ensure there are laundry facilities for employees.

COOKING FACILITIES Cooking facilities must be hygienic and in a clean condition.

COOKING SPACE Where employees cook their own food, there must be a designated space for cooking food with the following facilities:

- it must be separate from the sleeping areas in the living facility;
- the size of the cooking facilities must match with the number of people living in the facility;
- residents can cook on open fires as long as it takes place in a designated area.

Reference: SANS 10400 Part T.

COOKING STOVES Stoves used for cooking must be in good working condition and the electrical connections must be safe.



What is recommended?

KEEPING THE COOKING FACILITIES CLEAN Establish a cleaning procedure which identifies details such as: who is responsible for cleaning the facility, how often this takes place, the process of cleaning, and so on. It is good practice to record the cleaning and maintain a register in order to establish accountability.



COOKING SPACE AND APPLIANCES It is understood that it is common practice for cooking to take place in the living area, but this should be discouraged and provisions should be made for designated cooking area. Cooking equipment has been identified as a major cause of domestic fires and therefore measures should be in place to minimize and manage risks associated with cooking. This is in the interests of the safety of residents as well as the legal liability of the farm owner. Also important is the type and condition of the cooking equipment which can have an influence on the risk level. The use of combustible fuel cooking appliances, for example, paraffin cookers, should be restricted to designated areas only. Ensure that sufficient suitable fire extinguishers are available.



There should be adequate ventilation, particularly where combustible fuels are used, for example, LPG gas cookers, paraffin stoves etc.



What do the laws and regulations say?

LAUNDRY FACILITIES There must be laundry facilities for residents in communal living areas to allow employees to wash their clothes.

5. MEDICAL / FIRST AID

Management should ensure that adequate first aid is available to all residents living on site and that plans are in place for medical emergencies should they occur. *See Ethical Trading Handbook, First Aid, page 83*

What do the laws and regulations say?

FIRST AID There should be sufficient fully stocked first aid kits available at the communal living facilities. The first aid kits should be accessible and kept in a clearly demarcated area of the living facility. Use the legal requirements for the workplace as a guide for the number of first aid kits to be kept in the communal living areas. *See Ethical Trading Handbook, page 83 for more information.*

What is recommended?

It is recommended to appoint and train an employee as a first aider who not only works on the farm but who also resides there.



KEEPING A RECORD OF INJURIES An injury record book should be kept where injuries or incidents in the living facility are recorded. *See Ethical Trading Handbook, page 81 for more information*

MANAGEMENT SYSTEMS

3

This section looks at the management systems that are necessary to effectively manage and maintain employees' accommodation.



A. Management policies

1. ACCOMMODATION POLICIES AND HOUSING AGREEMENTS

ACCOMMODATION POLICY There should be a written management policy on housing and accommodation for employee housing facilities. The person responsible for managing accommodation must ensure that accommodation standards and plans are implemented.

The accommodation policy should be:

- Documented
- Authorized by senior management
- Accessible to management and employees
- Communicated to residents in a language they can understand
- Reviewed from time to time

Accommodation policies are essential for ensuring that employee housing and facilities are managed and cared for properly and that both parties (management and employees) are aware of their responsibilities.

HOUSING AGREEMENT The rules of occupation regarding accommodation should be included in the Housing Agreement. The terms and conditions in the Housing Agreement should be clear and should be explained to the employee before he or she moves into the house. The Agreement should be signed by both parties as part of the contract of employment.

See www.fruitsa-ethical.org.za under 'Documents' for an example of a Housing Agreement; also see Ethical Trading Handbook, page 85.

2. HEALTH AND SAFETY POLICY

There should be a health and safety management plan in place for employees' housing and accommodation that deals with all areas of risk, including electrical, mechanical, structural, and food safety. This should be available and accessible to employees and should be reviewed from time to time. The living quarters must be included in the health and safety risk assessment for the business. See *Ethical Trading Handbook, Health and safety environment, management and systems, page 79; and Risk Assessment, page 72*

The main responsibility for the person in charge of managing the employees' accommodation should be ensuring employees' physical safety and well-being. This involves making sure that the facilities are kept in good condition (for example, toilet and washing standards or fire regulations are in place) and that adequate health and safety plans and standards are designed and implemented.

REPORTING SAFETY INCIDENTS AND/OR ACCIDENTS The person in charge of managing the accommodation has a specific duty to report any incidents and/or accidents that occur in the living area to senior management and, where applicable, to assist with the investigation of any such incidents/accidents.

FIRE SAFETY MANAGEMENT PLAN A specific fire safety plan should be in place which includes training of fire wardens, periodic testing, availability and monitoring of fire safety equipment and periodic drills. This could include training a fire warden (in the case of a smaller sites) and/or fire team (for larger sites).

Fire drills should be held from time to time to raise awareness and ensure people are able to respond if there is an emergency. Record the dates of the drills. If there is a real emergency this will help you demonstrate that all reasonably practicable measures were taken to minimize the risks.

A specific fire safety plan should be in place which includes training of fire wardens, periodic testing, availability and monitoring of fire safety equipment and periodic drills. This could include training a fire warden (in the case of a smaller sites) and/or fire team (for larger sites).



EMERGENCY PLANS ON FIRE SAFETY There should be emergency plans on fire safety in place. These plans should be communicated to the residents and details of the communication must be recorded in writing. The emergency plans must be displayed in the facility.

ALCOHOL AND DRUG ABUSE AND TRADING, HIV/AIDS AND OTHER HEALTH-RELATED ACTIVITIES Develop a company policy with regard to issues such as alcohol and drug abuse, HIV and AIDS and any other health-related risks that might exist. Employees should receive guidance on the negative effects of the abuse of alcohol and drugs and other potentially harmful substances as well as the risks and concerns relating to HIV/AIDS and of other health risk-related activities. See *Ethical Trading Handbook, Health and safety environment, management and systems*, page 70 - 73.



ACCESS TO FIRST AID AND EMERGENCY MEDICAL SERVICE Emergency medical procedure should be displayed in the living area and should include contact numbers of medical services (for example, ambulance services) to call in the case of medical emergencies. The following should be in place regarding access to first aid and emergency medical services:

- Each communal accommodation unit should have an adequate number of fully-stocked first aid kits (use the health and safety legislation for the workplace as a guide to numbers of first aid kits) and these must be easily accessible.
- Trained first aiders - use the health and safety legislation as a guide for the number of trained first aiders; it is advisable to train a person (or people) who lives on the farm as a first aider so that he/she can take responsibility for the work site and living area.
- Names of the first aiders should be displayed in a place visible to everybody
- An injury record book
- An emergency medical procedure which is communicated to residents

3. DEDUCTIONS FOR ACCOMMODATION, FOOD AND SERVICES

Any deductions for rent and other services should be discussed during recruitment (i.e. before a person is employed) and specified in employees' contracts. This should specifically be stated in the Housing Agreement which is signed by management and the employee.

Deductions relating to accommodation must be clearly shown on an employee's payslip. Any deduction for accommodation should be carefully explained to the employee so that he /she is aware of the deduction. Charges relating to accommodation may not be more than what is allowed by law. If a deduction is made for housing, electricity must be provided free of charge. However if no deduction is made for housing, electricity consumed may be charged for. Any charges like this should still leave employees with sufficient income and should not lead to an employee becoming indebted to an employer (i.e. always owing money).

Where food and electricity are provided the maximum deduction for each is 10%.

Reference: Sectoral Determination 13, Section 8; See Ethical Trading Handbook, Deductions, pages 99-102; also see Section 2: A 2 of this Guide.

ACCOMMODATION AS AN EXCHANGE FOR PAYMENT Accommodation cannot be provided as payment for work. This includes the requirement for spouses / partners to work (for example, during harvest) to secure accommodation.

4. DISCIPLINARY AND GRIEVANCE PROCEDURES

There should be clear channels of communication between management and the resident employees to manage disputes in the accommodation site. The company's grievance procedure should be used to lodge any issues relating to accommodation.

RAISING ISSUES ABOUT HOUSING AND ACCOMMODATION There should be representatives of housing and accommodation on the farm committee who should raise issues to do with housing and accommodation with management as part of the functions of the committee. Where residents raise issues, management must provide feedback which should be recorded by management.

USING THE GRIEVANCE PROCEDURE The company's grievance procedure should be used to deal with grievances related to accommodation.

DISCIPLINARY PROCEDURES The company's disciplinary procedure should be used to deal with breaches of the Housing Agreement.

DEALING WITH CONFLICT BETWEEN RESIDENTS The farm committee should be responsible for dealing with conflict between people living and working on the site. The company grievance procedure should be used to deal with any grievances arising out of conflict between residents.

DEALING WITH SERIOUS CRIMINAL CASES AND THE POLICE Management should have an arrangement with the local police authorities to deal with more serious criminal offences, for example, drug or alcohol trading. It is useful to have this agreement in writing. An emergency procedure and contact number should be publicly available in the employees' accommodation.

B. Management and Staff

1. APPOINTING A MEMBER OF MANAGEMENT TO MANAGE EMPLOYEES' ACCOMMODATION

Management should appoint someone from within the management team to take responsibility for working with the accommodation committee (if such a committee exists) or farm workers committee and the employee elected to be responsible for staff accommodation. This should be someone with appropriate background and experience. The size of the site will determine whether this is a person from the management team or the owner him/herself. By appointing a person to oversee the employee housing, you are creating a controlled, structured environment which in turn enables the effective application of the rules, policies and procedures established by management.

2. APPOINTING STAFF FOR CLEANING AND MAINTENANCE IN COMMUNAL LIVING AREAS

Depending on the size of the accommodation, there should be sufficient staff who are appointed to be responsible for cleaning and general maintenance of accommodation and facilities.

3. STAFF TRAINING

HEALTH AND SAFETY TRAINING Staff must receive basic health and safety training as required by law.
See Ethical Trading Handbook, Health and safety environment, management and systems, page 70 – 73

KITCHEN People who are appointed to be in charge of kitchen/catering and/or canteen facilities in communal accommodation should receive training in food hygiene and food handling. Keep records of any training done.

C. Security

Management should have a security policy and plan in place to ensure the security of employees and their property on the accommodation site, for example to protect residents against theft and attacks. The policy should outline residents' rights and responsibilities. Management must decide on the most effective way of implementing a security plan and this could include recruiting staff whose main responsibility is to provide security. Alternatively, many people are entering into a service agreement with a company which provides a security service.

The security plan must be communicated to all residents.

1. SECURITY AND EMPLOYEES' RIGHTS

The code of conduct for security staff must include the importance of respecting employees' rights and the rights of surrounding communities, for example, in relation to freedom of movement and searches (including body, bags, cars, etc).

2. RAISING CONCERNS ABOUT SECURITY

Use the company grievance procedure to deal with concerns relating to security arrangements and security staff. The procedures for using the grievance procedure must be explained to the employees.

3. VISITORS AND ACCESS TO THE LIVING AREA

AgriSA has developed an Access to Farms Protocol which deals with the rights and responsibilities of residents and their visitors to farms.

GUIDE TO EXTENSION OF SECURITY OF TENURE ACT (ESTA)

4

ESTA was introduced in 1997 with the goal and principal aim to:

- provide measures to facilitate long-term security of land tenure for the individuals living on land zoned for agricultural purposes;
- in general regulate the conditions of residence on farms;
- prescribe the circumstances under which persons, whose right of residence has been terminated, may be evicted; and
- matters associated therewith.



Only the individual who received permission to live in a dwelling on the farm, defined as the Occupier, enjoys the principal protection of ESTA although the people living with the Occupier also enjoy a measure of protection through their association with him or her. The following main responsibilities rest on the Occupier: the Occupier must respect the rights of the owner, may not harm or threaten any other person occupying the farm, or cause material damage to the property of the owner, and must prevent visitors from causing damage, and generally comply with the terms of any reasonable agreement regulating the housing on the farm (“the Housing Agreement”). If Occupiers do not comply with these provisions of ESTA or the Housing Agreement their right of residence may be terminated which may in turn lead to their eviction in terms of a court order without necessarily being obliged to provide alternative accommodation.

Balanced against these responsibilities, the Occupier in general, has the following rights to:

- Receive visitors subject to reasonable conditions set by the owner (or person in charge), such as times of visits, gates through which visitors may enter, access roads, etc. The Occupier can be held liable for any damages caused by their visitors, if they could have taken reasonable steps to prevent the damage occurring.
- Receive postal or other communication.
- Family life in accordance with the culture of that family. For example, if Jan is an Occupier, he will in terms of this right be entitled to have his wife and children reside with him, this being generally in accordance with the culture of his family. In addition, this right could give Jan the right to have other members of family such as parents and other extended family members living in the house with him. Guidelines on who can or cannot stay with the Occupier in the provided accommodation, taking into account the general principles described above, should be contained in the Housing Agreement which should be signed and agreed to before the person is employed and granted access to the residence. In order to prevent overcrowding, reasonable conditions relating to maximum numbers of individuals occupying the premises may be set out in the Housing Agreement. Any agreement entered into will however at all times remain subject to the provisions of ESTA.

- Access to basic services, such as electricity and sanitation if this was agreed on with the owner or person in charge when they arrived on the farm.
- Not be denied or deprived of access to water.
- Not to be denied access to health and education services.

LONG TERM OCCUPIERS Apart from the general rights to security of tenure provided to Occupiers, ESTA acknowledges that certain classes of Occupiers, also known as so called “Long Term Occupiers” require extra protection. If an Occupier has lived on the land for 10 years or more and is older than 60 years or has become disabled while employed by the owner, then he/she can stay on that land until the death of the Long Term Occupier, on condition that such Occupier and the people occupying the property with him comply with the general rules applicable to ESTA or the Housing Agreement. On the death of the Long Term Occupier, the owner would be entitled to provide the remaining Occupiers with 12 months’ notice to vacate the premises. If, for example, the Occupier, or those occupying through him/her, behaves in a way that threatens the owner or damages the property or he/she commits a major breach of the agreement between the owner and themselves it would entitle the owner to terminate the right to residence earlier.

EVICTIONS IN TERMS OF ESTA A termination of residence and the resulting request for an eviction order can be fair if it is found that the Occupier committed a serious offence, was dismissed fairly or resigned (in terms of the Labour Relations Act) and/or refused to comply with the provisions of the Housing Agreement. Where the termination of residence was fair, the owner must then follow certain legal requirements in order to obtain an eviction order, for example, by providing the required notice in writing of two months to the Occupier, to the local authority and the Department of Rural Development and Land Reform. However, if the Occupier refuses to leave, the owner must get a court order to enforce the eviction. If the Occupier disputes the eviction then the reasons for this must be raised in the court.

All the eviction orders granted in the magistrate’s courts are referred to the Land Claims Court for the automatic review of the decision before it can be enforced.

CHECKLIST ON EMPLOYEES' ACCOMMODATION

SECTION 1: THE LEGAL FRAMEWORK	Y	N	N/a	Comments
(a) Have relevant national and local regulations been identified and implemented?				
SECTION 2: GUIDELINES TO THE LAW AND BEST PRACTICE FOR ACCOMMODATION ON FARMS				
A. GENERAL CONDITIONS OF LIVING FACILITIES				
1. Location				
(a) Is employees' accommodation surrounded by or situated close to the production areas?				
(b) If so, are measures in place to protect employees and their families living in the accommodation from exposure to chemical sprays?				
(c) Is there a clearly visible access route to the accommodation area for purposes of fire-fighting and rescue?				
2. General living conditions of living facilities				
(a) Are living facilities built with suitable materials and are the facilities structurally sound?				
(b) If deductions from employee's wages are made for accommodation, are the minimum housing requirements included in Sectoral Determination 13 section in place:				

	Y	N	N/a	Comments
• Durable and waterproof roof?				
• Glass windows that can be opened?				
• Electricity inside the house if the infrastructure exists on the farm?				
• Safe water inside the house or close to the house (not more than 100 metres from the house)?				
• Flush toilet or pit latrine inside or close to the house?				
• House is not less than 30 square metres?				
(c) If deductions are made from employees' wages for accommodation, this does not exceed 10% of the primary employee's wage and electricity is provided free of charge?				
3. Asbestos in living facilities				
(d) Where asbestos is used in living facilities, has management developed and implemented an asbestos maintenance plan?				
4. Drainage and sewage				
(a) Does the accommodation site have an adequate drainage system in place to avoid the accumulation of stagnant water?				
(b) Are septic tanks and conservancy tanks adequately built to prevent leakage or spillage?				

	Y	N	N/a	Comments
5. Insulation, ventilation and lighting				
(a) Are the living facilities adequately insulated and ventilated?				
(b) Is sufficient natural and artificial lighting provided and maintained in living facilities?				
6. Water and water storage				
(a) Do employees have access to an adequate and convenient supply of free potable water?				
(b) Does drinking water at living facilities meet the South African National Standard for drinking water?				
(c) Are all tanks used for the storage of drinking water constructed and covered to prevent water stored from becoming polluted or contaminated?				
(d) Is the quality of the drinking water regularly monitored?				
(e) Does management ensure that disused chemical containers are not used to store, collect or disperse water to be used for human consumption?				
7. Waste water and solid waste				
(a) Is waste water, sewage, food and any other waste materials at living facilities adequately cleared away?				

	Y	N	N/a	Comments
(b) Are adequate containers for rubbish collection provided at living facilities and are these emptied on a regular basis?				
(c) Are all manholes adequately covered and do not pose a health and safety risk to residents?				
(d) Is there proper protection from all disease-carrying pests, insects and animals at living facilities?				
B. COMMUNAL LIVING FACILITIES				
1. General conditions of sleeping facilities				
(a) Are communal areas maintained and kept in good condition?				
(b) Are there separate rooms for males and females, except in the case of family accommodation?				
(c) Is there adequate space for employees living in communal sleeping areas?				
2. Sleeping arrangements and storage facilities				
(a) Are there adequate beds / mattresses provided for employees living in communal areas?				
(b) Is there adequate floor space for the number of beds / mattresses in communal areas?				

	Y	N	N/a	Comments
(c) Are the beds provided safe and not a health and safety risk to employees?				
(d) Are facilities for the storage of personal belongings provided for employees living in communal areas?				
3. Toilets and washing facilities				
TOILETS				
(a) Are there adequate toilet facilities provided in the communal living areas?				
(b) Are the toilet facilities hygienic?				
(c) Do they provide adequate privacy?				
(d) Are toilets well ventilated?				
(e) Are toilets easily accessible?				
(f) Is there a facility for washing hands?				
SHOWERS AND BATHROOM FACILITIES				
(a) Are there adequate shower / bathroom facilities provided in communal living areas?				
(b) Are there systems in place to ensure that shower and bathroom facilities:				
• are clean and hygienic?				
• are segregated by gender, except in family accommodation?				
• have running water?				

	Y	N	N/a	Comments
4. Cooking and laundry facilities				
COOKING FACILITIES				
(a) In cases where employees cook their own food, is cooking space provided separate from the sleeping areas?				
(b) Is there a designated area assigned for cooking on open fires?				
(c) Where electrical stoves are used for cooking, are they in good working order and are the electrical connections safe?				
(d) Are cooking facilities hygienic and in a clean condition?				
LAUNDRY FACILITIES				
(a) Are residents provided with facilities to wash their clothes?				
5. Medical /first aid				
(a) Are there adequate first aid kits available in accommodation facilities?				
(b) Are the first aid kits easily accessible?				
(c) Is there a system in place for the recording of injuries or incidents in the living facility?				

SECTION 3: MANAGEMENT SYSTEMS

A. Management policies**1. Accommodation policy and agreements**

(a) Is there a written management policy on accommodation for employees?

(b) Is there a person appointed to manage the accommodation and is he/she provided with the adequate responsibility and authority to do so?

(c) Is there a Housing / Accommodation Agreement signed by each employee who receives accommodation as part of the contract of employment?

(d) Are both the employer and employees aware of the parties' rights and responsibilities in the Housing Agreement?

2. Health and Safety Policy

(a) Is there a health and safety management plan in place that deals with all areas of risk including electrical, mechanical, structural and food safety?

(b) Are living facilities included in the health and safety risk assessment for the business?

(c) Does the accommodation manager report any incidents and / or accidents in the living area to senior management?

(d) Is there a specific and adequate fire safety management plan in place?

	Y	N	N/a	Comments
(e) Are fire drills held from time to time and is there a record of these drills?				
(f) Is guidance on alcohol, drug and HIV/AIDS and other health risk-related activities provided to employees?				
(g) Are emergency medical procedures displayed in a public place (including contact numbers of medical services such as ambulances)?				
(h) Are first aid kits available and easily accessible in the communal living area?				
3. Deductions for accommodation, food and services				
(a) Are deductions for rent discussed during recruitment?				
(b) Are deductions for rent specified in the Housing Agreement?				
(c) Are deductions for rent shown on employees' payslips?				
(d) Are deductions for rent compliant with the law?				
4. Disciplinary and grievance procedures				
(a) Is there a procedure in place for employees to lodge grievances relating to accommodation?				
(b) Is there at least one representative on the farm committee responsible for raising issues related to accommodation with management?				
(c) Is there a disciplinary procedure in place to deal with breaches of the Housing Agreement?				

	Y	N	N/a	Comments
B. Management and staff				
1. Appointing a member of management to manage employees' accommodation				
(a) Is there a member of the management team who is responsible for managing employee accommodation?				
2. Appointing staff for cleaning and maintenance in communal living areas				
(a) Are there sufficient people responsible for cleaning and general maintenance of accommodation?				
3. Staff training				
(a) Do staff receive the necessary health and safety training as required by law?				
4. Kitchen				
(a) Are kitchen staff trained in food hygiene and food handling?				

	Y	N	N/a	Comments
C. Security				
(a) Is there a security plan in place to ensure the security of employees and their property at the accommodation site (including measures to protect employees against theft and attack been designed and implemented)?				
(b) Are employees' aware of their rights and responsibilities in terms of the security policy?				
1. Security and employees' rights				
(a) Does the policy include employees' rights regarding freedom of movement and body and personal property searches?				
(b) Are limitations on employees' freedom of movement limited and justified?				
2. Raising concerns about security				
(a) Can employees raise concerns about security through the company grievance policy?				
3. Visitors and access to the living area				
(a) Are management and employees aware of the rights and responsibilities of residents and their visitors to farms and the living area?				