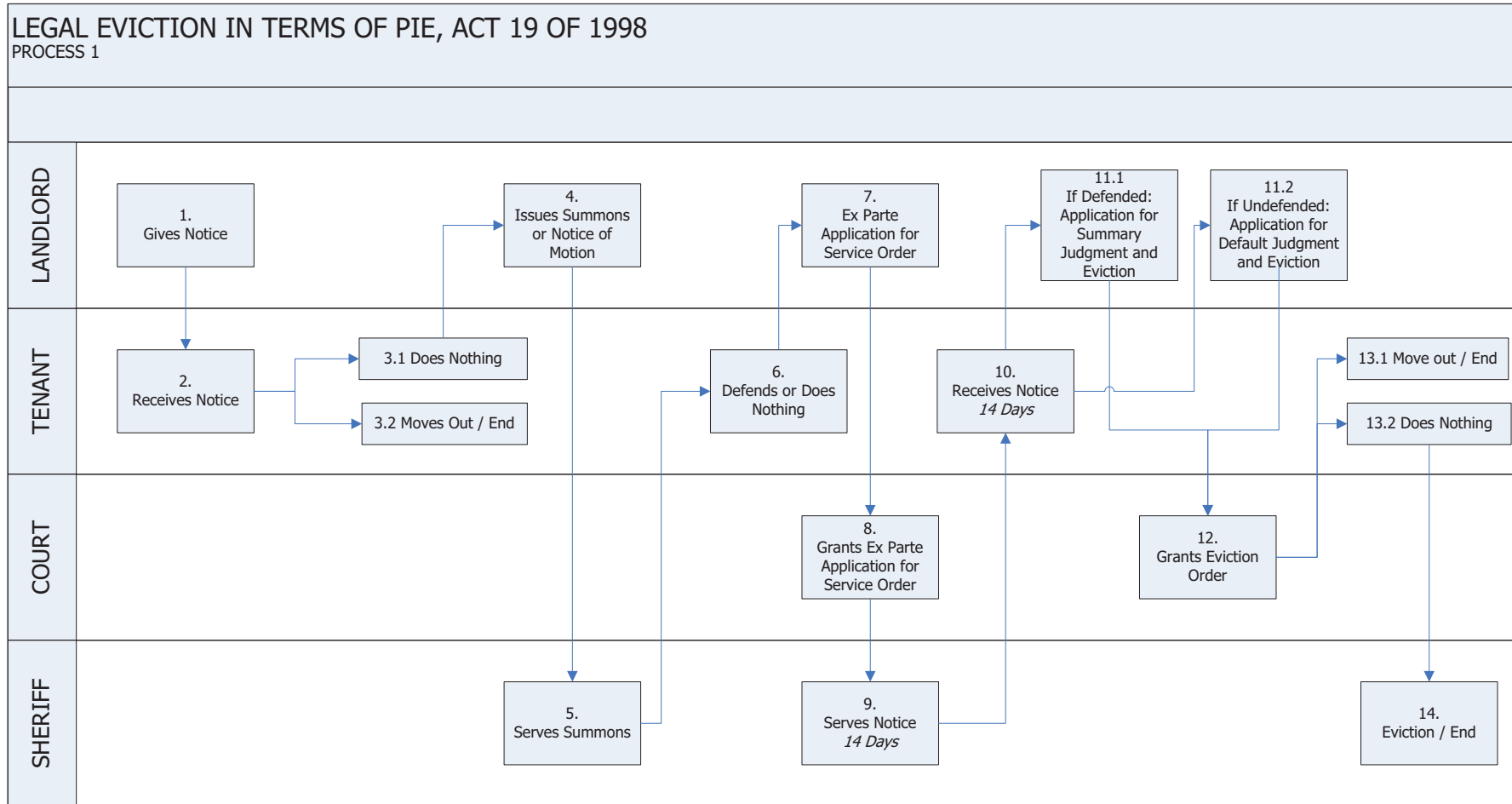


PROCESS 1 – LEGAL EVICTION PROCESS



Legal Eviction Process (Process 1)			
Ref.	Item	Description	Reference
1.	Landlord Gives Notice	<ul style="list-style-type: none"> In terms of the lease agreement, the Landlord is normally required to give notice to the tenant. If notice is not required (such as in a fixed term lease), then this stage may be omitted 	<ul style="list-style-type: none"> Lease Agreement

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		<ul style="list-style-type: none"> The number of days notice to be given is normally provided for in the lease agreement It is advisable to give reasons for termination of the lease in order to avoid accusations of unfair discrimination Should the landlord not give notice when required to do so, or does not give notice according to the lease agreement, the tenant can institute legal action based on breach of the agreement Normally written notice is given to the tenant who is a signatory to the lease agreement. It may, however, also be given verbally if the contract allows for this 	
2.	Tenant Receives Notice	<ul style="list-style-type: none"> The tenant receives either written or verbal notice that the agreement is terminated and that the tenant must vacate the property by a certain date <p>The Notice can be either written or verbal. It is preferable that the notice be written</p> <ul style="list-style-type: none"> The Notice should state when the property must be vacated by, as well as what the reasons are for the notice to vacate 	<ul style="list-style-type: none"> Lease Agreement Written Notice
3.1	Decision to do nothing	<ul style="list-style-type: none"> The tenant may ignore the notice to vacate and does not move out of the property The reasons could be that no alternative accommodation is available or that alternative accommodation cannot be afforded Another reason could be that the tenant is deliberately refusing to leave even where she can afford alternative accommodation, putting the landlord to the trouble and expense of an eviction order 	
3.2	Decision to vacate property	<ul style="list-style-type: none"> The tenant decides to vacate the property and the process ends 	
4.	Landlord Issues Summons / Notice of Motion	<ul style="list-style-type: none"> The landlord, through a legal representative, issues summons or brings an application by notice of motion Summons is issued through a High Court or Magistrates' Court The jurisdiction depends on the cause of action and the amount involved, or as agreed in the lease agreement between the parties 	<ul style="list-style-type: none"> Rules of Court PIE or common law
5.	Sheriff Serves Summons	<ul style="list-style-type: none"> The summons must be served by a sheriff There are various rules that dictate how a summons must be served. (For instance, a summons is 	

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		<p>normally served at the workplace or residence of the defendant. The summons must either be served personally on the defendant or on a person older than 16 years at the address of the defendant.) The address where documents must be served is known as the <i>domicilium citandi et executandi</i> and is normally included in the lease agreement.</p> <ul style="list-style-type: none"> The sheriff completes a Return of Service in which it is indicated whether the summons was served on the defendant or not as well as the manner in which it was served The reason for this process is to ensure that the defendant is given the opportunity to respond to the claim 	
6.	Decision by Tenant to Defend or Not to Defend	<ul style="list-style-type: none"> Upon receipt of a copy of the summons from the sheriff, the tenant must decide whether there is cause to defend the claim, preferably, with legal assistance. If the tenant decides to defend the action, she must give notice of her intention to defend to the plaintiff/landlord Normally the defendant/tenant will acquire legal representation at this point 	
7.	Ex Parte Application for Service Order	<ul style="list-style-type: none"> PIE requires that an application must be made to Court for an order as to how a section 4(2) notice must be given that an eviction hearing will take place Application is made, normally in the Judge/Magistrate's chambers The sheriff normally serves the section 4(2) notice on the respondent Local municipality must be joined as a party 	<ul style="list-style-type: none"> PIE
8.	Granting of Order	<ul style="list-style-type: none"> Judge/Magistrate grants the service order 	
9.	Sheriff Serves 14 Days Notice	<ul style="list-style-type: none"> Service is effected by the sheriff of the Court Service is normally on the person, but may be on a person older than 16 years of age at the <i>domicilium</i>. The <i>domicilium</i> is the place where documents must be served, normally agreed to in the lease agreement Service can also be attached to the door 	<ul style="list-style-type: none"> Rules of Court PIE
10.	Tenant Receives Notice	<ul style="list-style-type: none"> Notice is served by sheriff on the tenant The tenant now has to decide whether to attend Court on the date indicated in the notice 	

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		<ul style="list-style-type: none"> The tenant can still obtain legal representation at this point 	
11.1	If Action Defended: Apply for Summary Judgment	<ul style="list-style-type: none"> Application for summary judgment in Court Application for summary judgment is normally made when there is suspicion that the other party is abusing the Court process through delay (although summary judgment is normally used for liquid claims, it may also be used in application for ejection, although in practice this is rare.) 	
11.2	If Action Not Defended: Apply for Default Judgment	<ul style="list-style-type: none"> Application for judgment by default 	
12.	Court Grants Eviction Order	<ul style="list-style-type: none"> Obtain warrant of execution based on order granted 	
13.1	Tenant Moves Out	<ul style="list-style-type: none"> Decision to vacate Process ends If rent interdict is in place, the tenant may not remove her belongings 	
13.2	Tenant does not vacate	<ul style="list-style-type: none"> Tenant does not vacate 	
14.	Eviction by Sheriff	<ul style="list-style-type: none"> Landlord makes application for warrant of ejection based on judgment granted With a warrant of ejection, the sheriff can legally eject the tenant If summons was issued with a rent interdict, the sheriff will, upon service, list possessions, which may not be removed from the property by the tenant and may subsequently be sold in execution. 	