

Investigation into the delays in issuing title deeds to housing subsidy beneficiaries - Mark Napier, Urban LandMark

a. Where are 1.5 million title deeds?

Mark Napier pointed out that the purpose of this body of research was to find out why 1.5 million people have received subsidy benefits, but have not registered a formal title. The research comprised a desktop review and interviews with 32 stakeholders. It was noted that the individuals showing up on the title deeds register may not be in the hands of people on the ground, so the figure of 1.5 million could be even worse. A title deed is the property owner's proof of ownership. In South Africa, a property owner cannot do their own transfer of title deeds – it has to be done by what is known as a conveyancer. In other countries it is possible for owners to transfer their own details, but in South Africa it costs between ZAR5000 and ZAR6000 to change details on a title deed, which is a lot of money for a low-income housing property owner.

b. What is the problem with title deeds in South Africa?

The problems encountered with title deeds were many and included different issues in different parts of the country. Mark discussed the Urban LandMark-commissioned report "*The struggle for property ownership in New Crossroads*"¹, which talks about houses where people are unsure if they're paying rent or rates. There is an issue of property law versus transaction law, i.e. the title deed might not have changed yet there might have been a transaction. Title deeds can be passed on to heirs but there may not be any formal record of transfer. The process of registration is convoluted and includes registering land, township establishment as well as purchasing and transferring land, and township establishment requires many steps. A further issue around cost is that once a mortgage is paid, it costs approximately ZAR3000 to receive the title deed from the bank.

c. Should it really be all that complicated?

The delays in the process that are caused by delays in township establishment and proclamation processes are due to delays in proclamation where the various requirements to get an approval of a general plan are not set, and where there are difficulties in resolving underlying land rights. Further reasons include municipal and provincial difficulties due to lack of capacity, officials not understanding the process, misalignment between departments, and difficulties in rectifying misallocations of subsidy houses, and a disproportionate focus on delivery at the expense of ensuring title registration. There are also issues in the physical implementation due to sites being occupied informally and problems with the legislation. There are three different legislative options i.e. the Provincial Ordinances, the Less Formal Township Establishment Act and the Development Facilitation Act (DFA). The Constitutional Court ruling that invalidates sections of the DFA is a further problem, with implications for the other two routes. In addition there are problems within the Deeds Registry offices, including repeated returns on applications. Another key challenge, particularly for rural areas, is land that is held in trust by traditional leaders and legal uncertainty around tribal land

Some additional problems may be caused by the fact that there have been many revisions to the payment process between 1995 and the present. Another problem could be that during the township establishment process, many developers walk away before the last payments; this could

¹ See www.urbanlandmark.org.za/research/x44.php for a copy of the report.

be because there are higher earlier payments and the final pay-off is too low and not worth their time and expense. Title deeds are sitting in filing cabinets at the Deeds Office. Is it appropriate that the deed registration system is so heavy on fees? If legal oversight is required, then it's necessary for transfer to become cheaper per unit.

d. The consequences of delays in issuing title deeds

- Due to informal sales there is a discrepancy between occupants and owners in the registry.
- The longer a title deed is left to update, the greater the backlog at the deeds office, making it harder to resolve.
- Many title deeds can't be found, which then requires court action.
- Unresolved estates are an issue, which provides no protection for children of property owners.

In conclusion, strong campaigning is required to unblock the system, plus a much more simplified system of registration.

Open discussion:

Following the presentations, the floor was opened for debate and discussion.

Marcel Zimmerman, Zimmerman Consultants: A question addressed to Kecia, asking if the research was spatially located. 'Housing is an asset but in some ways it's distorting South African cities from a strategy perspective, therefore can the study expand any further to look at the issue of location?'

Aly Karam, University of the Witwatersrand: If people are happy where they are, will they want to move? South Africa has a stable democracy and the idea of ownership was to keep people happy and stable in their current locations.

Rob McGaffin, Urban LandMark: There is value differentiation between the subsidy and discounted benefits scheme; perhaps the question to ask is about location?

Jean du Plessis, UN Habitat: What about someone that remains poor, that gets bought out of their RDP because of its low value, and ends up back in their previous situation; are people re-joining the subsidy/housing waiting list? It would be good to have some hard data.

Marcel Zimmerman, Zimmerman Consultants: How many people have two RDP houses?

Kecia Rust, Centre for Affordable Housing Finance in Africa, a division of FinMark trust: The following presentation by Adelaide will demonstrate that the study did not know how to spatially locate millions of properties and make sense of the data within the research that was carried out. It would be advantageous to have a tool that provides better information about how all the markets work together.

Responding to the question about place; many more discount benefits applied to bonded properties that were sold; it could be the age of the household, it could be that people were in the wrong places.

It is difficult to understand the issue of downward raiding and selling of houses because there is no data, and the reasons for this are that:

- 1) Many transactions are cash
- 2) Many people are terrified of having the conversation because they think that selling RDP houses is illegal.

It is not illegal anymore, so information needs to be made available to clarify the issue.

For the market to work people need to be able to do what they want, for example sell their property, as well as have existing systems they can draw upon for assistance and information - the complexity of the process is a problem. There is going to be downward grading, but South Africa needs wider housing opportunities, e.g. enabling people to build backyard accommodation that is suitable for their particular affordability level, and to be able to change that when they want to.

Mark Napier, Urban LandMark: Mark commented that the situation could be perceived as the State giving an asset that the public has paid for, or it could be perceived as a market of buying and selling, or it could be perceived as building stock in a country - any country – in which people are where they want to be. With production being managed by the state, at some stage housing will be built in the wrong place. However, take the examples of Khayelitsha and Diepsloot - places that were thought to have been built in the wrong area then, but are now in desirable locations.