



Urban LandMark

making urban land markets work for the poor

**INVESTIGATION INTO THE DELAYS IN ISSUING
TITLE DEEDS TO BENEFICIARIES OF
HOUSING PROJECTS FUNDED BY
THE CAPITAL SUBSIDY**

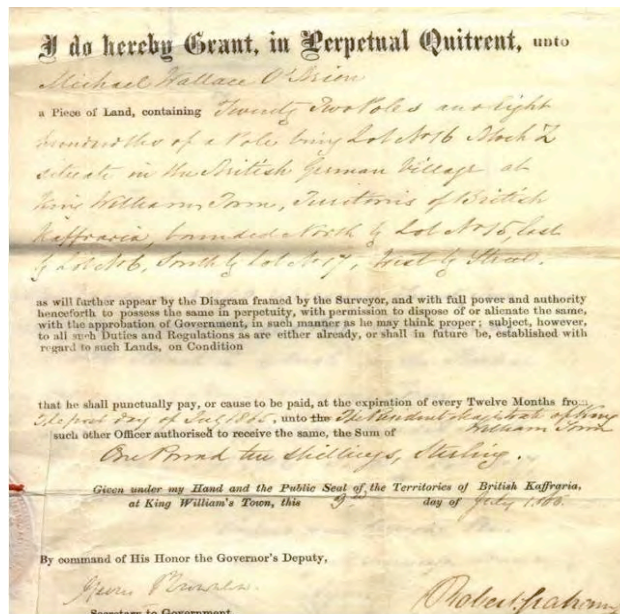
Desktop Review

March 2011

This project was commissioned by Urban LandMark and undertaken by Shisaka Development Management Services. The project team comprised Ros Gordon, Matthew Nell and Adrian Di Lollo. This report was prepared by Adrian Di Lollo, Ros Gordon and Matthew Nell.



“The way in which an asset is transferred is as important as the asset itself.”¹



¹ From *The struggle for new property ownership in New Crossroads* (2010). Urban LandMark

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1.0 Introduction

South Africa's housing policy was launched in 1994 with a key component being the housing subsidy scheme which promised to deliver one million houses in five years. Since that date the Department of Human Settlements estimates that it has delivered approximately 2.8 million houses to qualifying beneficiaries throughout South Africa, through this scheme. These houses have been delivered through a variety of subsidy mechanisms, with the most predominant being the provision of a small low cost house on a stand to a qualifying individual, free of or at a minimal charge, on an ownership basis (often called 'RDP houses').

The majority of these individuals should have received the title deeds to their houses. It is generally recognised that receiving title is an important component to the provision of a subsidy house and is critical to ensuring that poor households can use their house as an asset to build wealth. The Breaking New Ground review (2009) explicitly identifies the need to ensure residents of subsidised housing access formal title, as a leading public policy priority. The report emphasises that duly conferred legal title, as registered in the deeds registry, is critical to enable a functioning housing market, that it creates certainty in legal transactions and provides "a central, unchallengeable repository of ownership." Recognizing that subsidised houses have extremely limited potential to function as an asset without the provision of formal title, the report identifies the objective of ensuring that formal transfer occurs as quickly and as efficiently as possible.

However, the extent to which title has been transferred to subsidy beneficiaries is not certain and there are currently a number of initiatives underway to determine the extent to which title has been provided.

Urban LandMark (ULM) appointed **Shisaka Development Management Services (Shisaka)** to carry out an investigation into what key stakeholders (government officials in all three spheres as well as housing institutions, developers, NGOs) and parties believe is the reason behind the delays and blockages in issuing title deeds to housing beneficiaries. The investigation was not intended to be primary research but rather an interrogation and analysis of informed expert opinion of key stakeholders. The investigation has been distilled into a report that includes recommendations on efforts to resolve the current problem and the historical backlog, as well as recommendations for how ULM could usefully take up this issue in the future.

The methodology for undertaking the work comprised:

1. **Desktop review:** This comprises a desk top review of existing research and documents.
2. **Interviews with experts:** Telephone interviews will be held with approximately 30 stakeholders in order to obtain their insights and opinions.
3. **Developing recommendations.**

This report sets out the Desktop Review and includes current and past thinking in respect of:

- Defining title to a property
- The process of registering property in South Africa
- Factors that are causing blockages
- The extent of the problem
- Recommendations to resolve the problem

It is noted that documentation concerning the current state of the deed transfers for beneficiaries of state-subsidised (RDP) housing, and the backlog of such in the Deeds Office, is somewhat limited. However, by drawing on various reports prepared for (or by) government and non-government institutions between 2004 and 2011 on the broader issues affecting the low-income housing market, through examining records on parliamentary committees and presentation, and through extrapolating from government statements and press releases, it is possible to identify some important issues of causality to guide further research.

In late 2010, the National Department of Human Settlements commenced its own investigation of title registration backlogs in deed offices around the country. The investigation was conducted the Department's Research Directorate and a report was presented to the Director General in February, 2010. At the time of writing, however, the report was not yet available for public consumption.

2.0 Defining title to a property

A title deed is the legal document that reflects the ownership of a property. When a property is bought and/or sold and transfer takes place, the existing title deed is superseded by a new title deed which is executed in the Deeds Office through a signature by the conveyancer and the Registrar of Deeds. The title deed is therefore an extremely important document as it is the owner's proof of ownership. In principle, owners of property should either personally have a copy of their title deed, or if a financial institution holds a mortgage over the property, the title deed should rest with the financial institution².

The Registrar of Deeds is an independent unit within the National Department of Rural Development and Land Reform and has a staff contingent of approximately 115. In addition to the Office of the Chief Registrar of Deeds there are 9³ deeds registries located throughout the country. The function of the deeds office is to keep a public register of land; preserve the records and provide information to the public. The Deeds Registrar Act, 47 of 1937 is the law which gives rise to the deed's office's mandate.

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My ref: _____ Tel: 012 358 9806
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Division/Section/Unit: Housing Administration

REQUISITION OF TITLE DEED

I/We Botha N.C. ID No 690207 0852 083
..... ID No

the undersigned, do hereby acknowledge the receipt of the Title Deed for Erf No 588/
Winterveld EXT 3 Title Deed No: T. 64809 2009

Signature 1: Cynthia Botha

Signature 2: _____

CITY OF TSHWANE HOUSING
2010-05-12
MANORANI

Ms. M. Phora
STRATEGIC EXECUTIVE DIRECTOR:
HOUSING AND SUSTAINABLE DEVELOPMENT

On request, this document can be provided in another official language.

Ke Nako. Celebrate Africa's Humanity

² Resource Report 7: Secondary markets, Banking Association SA, 2005

³ The Deeds Registry website lists the address and contact details of the nine registries. However in one of the Parliamentary questions the existence of registries in Limpopo and Mpumalanga was questioned. This will be probed in the interviews with stakeholders

3.0 The process of registering land in South Africa

The process of registering land in South Africa can be divided into two components:

- Township establishment for ownership of individual erven/plots;
- Process of purchasing and transferring land

Each of these is equally important in respect of the development of subsidised housing and is therefore outlined in more detail below.

3.1 Township Establishment for ownership⁴

The Township Establishment process is a highly regulated stepped process to bring vacant, serviced, identifiable, registerable sites onto the property market for sale. Figure 1 below provides a summary of the typical township establishment process.

Figure 1: Typical Township Establishment Process

Layout Plan	<ul style="list-style-type: none">▪ A layout plan needs to be prepared by a town planner and approved by the relevant local authority.▪ This plan must indicate the proposed land use (zoning) as well as circulation.
Detailed Survey Plan	<ul style="list-style-type: none">▪ Requires land to be surveyed (pegged & calculated) and the establishment of a cadastre in line with the Land Survey Act.▪ This usually indicates the main boundaries and a land description.▪ The survey plan must be approved by the Surveyor General.
General Plan	<ul style="list-style-type: none">▪ The survey plan once approved by the Surveyor General becomes the General Plan.▪ Needs to occur in line with township establishment laws, i.e. LEFTEA, DFA and Ordinance or applicable provincial legislation.
Township Register	<ul style="list-style-type: none">▪ Consolidation of land constituting the town into a single piece of land and removal / cancellation of underlying restrictions on the land including mining and mineral rights, historical servitudes such as aqueducts, rights of way, commonage rights, etc.▪ Opening of Township Register is necessary to effect individual transfers in respect of sites shown on General Plan.
Individual Title	<ul style="list-style-type: none">▪ Granting of freehold title through the registration of individual sites in the names of their owners in the relevant Deeds Registry.

⁴ This section from Workings of Township Property Markets, Cadastral Review, 2004

What is critical to note is that before township registers can be opened, a General Plan must be prepared, based on a detailed survey plan of the township and it must be approved by the Surveyor General. This involves numerous steps and costs. It is a procedure required for all mainstream township establishment laws including the Less Formal Township Establishment Act (LEFTEA), Development Facilitation Act (DFA), and Ordinance/provincial township establishment legislation⁵. It is **further critical to note that unless a Township Register is opened individual title cannot be transferred.**

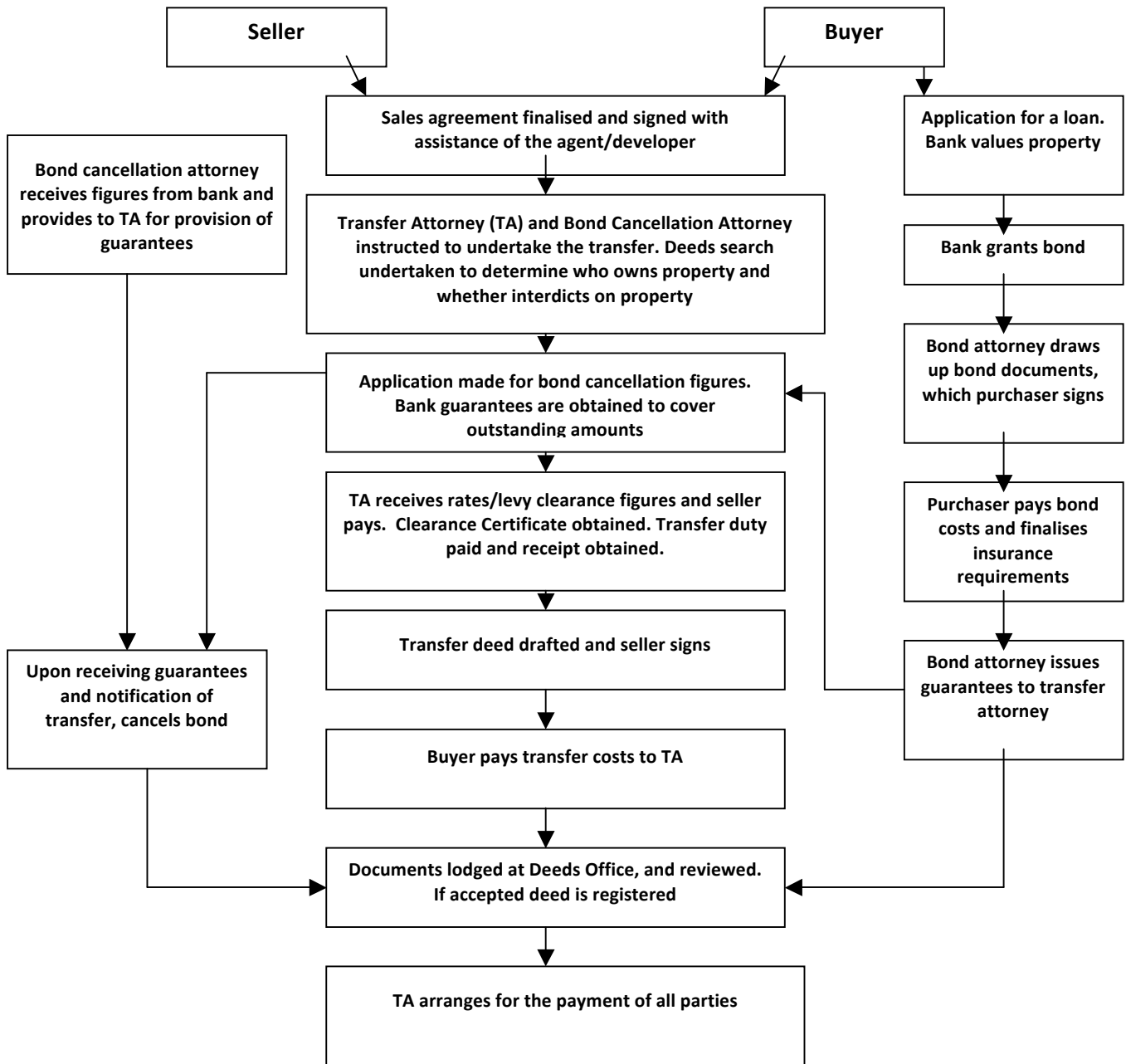
3.2 Purchasing and transferring land

Once a Township Register has been opened, the properties within that Register can be traded, i.e. bought and sold. Set out below is an analysis of the typical process of purchasing and transferring land in South Africa.⁶ This assessment gives some insight into both the complexity as well as timelines involved in the process.

⁵ The Development Facilitation Act is no longer in use

⁶ The analysis undertaken in this report assumes the purchasing and transfer of land between private individuals. The process may be different if the Public Sector is either the buyer or seller.

Figure 2: The process of purchasing and transferring land in South Africa⁷



⁷ Workings of Township Residential Property Markets, Cadastral Review, 2004

Table 1: Analysis of the process of purchasing and transferring land in South Africa⁸

	Step	Who Involved	Requirements	Time Taken	Constraints / Delays	Time Added Due To Delay
1.	Sign sales agreement	<ul style="list-style-type: none"> - Developer, estate agent, sales administrator or attorneys - Purchaser 	<p>Purchaser will be required to provide all or some of the following documents:</p> <ul style="list-style-type: none"> - Identity documents - Marriage certificate - Salary slip <p>A credit check may be undertaken Sales agreement developed and signed by purchaser and seller/developer. Transfer Attorney and Bond Cancellation attorney notified and instructed to undertake the transfer.</p>	1 – 2 days if all doc's are provided	Purchaser does not provide all of the documents timeously	Anything from 1 – 4 weeks
2.	Bond application (if mortgage finance is involved/required)	<ul style="list-style-type: none"> - Financial institution (FI) - Purchaser - Estate Agent/Developer - Bond conveyancer 	<p>Documents provided as above:</p> <ul style="list-style-type: none"> - Identity documents - Marriage certificate - Credit assessment information - Salary slips <p>FI values property, does structural assessment FI provided copy of the sales agreement FI appoints a Bond Conveyancer to register a new bond. Bond Conveyancer draws up bond documents which purchaser must sign at the Conveyancers offices. Bond Conveyancer issues guarantees and sends to Transferring Attorney</p>	1 month	<p>May be delays in valuing.⁹ May not value property at developers selling price and may only grant part bond – purchaser may not be able to raise additional finance. Signing of bond documents by husband and wife could take an extended period</p>	Anything from 1 – 4 weeks
3.	Fulfilling pre-transfer requirements	<ul style="list-style-type: none"> - Developer/Estate Agent - Conveyancer [Transferring attorney TA) - Purchaser - Seller - Financial Institution - Bond Cancellation 	<p>TA requires personal information – identity documents, marriage certificate etc TA undertakes deeds search to determine if there are any interdicts on the property. If so the TA informs the relevant parties and provides FI guarantees as required. If there is a bond over the property the TA writes to the FI to inform them that the property has been sold. TA provides FI guarantees for the bond amount owing.</p>	4-6 weeks	<p>Can be delays in obtaining personal information Municipality can cause delays in providing rates clearance values and certificates. In some cases the amount is disputed or the rates are so high that they impede transfer.</p>	1-3 months

⁸ This process incorporates accessing mortgage finance which is not usually the case in respect of subsidy housing.

⁹ It is assumed that a township register is in place. If not, no registration can take place. The registering of a township register is a two year process

Investigation into the Delays in Issuing Title Deeds to Beneficiaries of Housing Projects Funded by the Capital Subsidy
 Desktop Review March 2011

	Step	Who Involved	Requirements	Time Taken	Constraints / Delays	Time Added Due To Delay
		Attorney	FI instructs Bond Attorney to forward the title deed to the TA and to cancel the bond. TA writes to Municipality to obtain rates clearance charges to end of month when transfer will occur. Seller required to provide specified funds which are paid to the Municipality and a Clearance Certificate is issued. Purchaser must pay service deposits to the Municipality Purchaser signs power of attorney.			
4.	Drawing up transfer documents/deed	<ul style="list-style-type: none"> - Transferring attorney - Purchaser - Seller 	Conveyancer draws up transfer deed Assembles all documents Seller and purchaser sign transfer documents at TA office. Purchaser pays for deeds office levy and transfer duty. Purchaser pays costs to TA	2 week	Can be small delays in co-ordinating this Can be delays if this cost not anticipated	2 Weeks
5.	Lodging at Deeds Office	<ul style="list-style-type: none"> - Transferring attorney - Bond registration attorney - Bond cancellation attorney - Deeds Office 	TA, Bond Conveyancer and Bond Cancellation Attorney ensure that all documentation is in order and complete. They liaise and all lodge their documents with the Deeds Office on the same day. Deeds office levy and transfer duty fees are paid on behalf of purchaser Deeds office receives all documents which go to the examiner. If in order they are placed on prep The draft deed is checked and if there are any queries they are referred to the TA. If rejected the document will have to be relodged. If accepted the deed is registered.	2 weeks	If difficult to co-ordinate can be delays Deeds Office has specific requirements that must be met and can send documents back for re-doing If needs revision then delays	2 weeks
6.	Payments to parties	Transferring attorney	Once registered the TA arranges for all payments to be made to the Estate Agent/Developer, Seller, Financial Institution			

4.0 Factors causing blockages

The key factors causing delays in the transfer of title to subsidy beneficiaries are set out below:

- 1) **Delays in the opening of township registers:** The FinMark Trust, *Workings of Township Property Markets, Cadastral Review* (Shisaka, 2004) identified significant delays in the opening of township registers and specifically noted that while this applied to all properties, it was more severe in respect of state-subsidised housing. The key causes of these delays include:
 - *Delays in Proclamation.* These occur where the various requirements to get an approval of a general plan, such as surveying, have not been met. In addition the need for comprehensive environmental assessments results in delays.
 - *Delays in Opening a Township Register.* The primary delay in this respect is the resolution of the underlying land rights. This requires not only proclamation (i.e. approval of the general plan) to be in place, but also the resolution of all restrictions and servitudes. The process can be hampered by missing information, deceased rights holders, and general inaccuracies in recorded data.

The Department of Human Settlements (2010)¹⁰ strongly concurred that the problem of township establishment blockages is, in turn, a major hindrance to timely title deed registration. The Department has indicated that from the outset of the process land ownership issues are often not resolved and this is further complicated by the fact that construction often proceeds before the township has been established. The Department noted that the township establishment process itself is laden with complex administrative requirements including the need for prescribed documents to be signed by a range of stakeholders. Given the combination of these factors it is not surprising that the General Plan for a new township is often significantly delayed (e.g. postponed for amendments) or is never finalised at all.

In addition, there is often illegal occupation of the demarcated sites in the township and what the Department referred to as a “mix-up” in sites occupied by approved beneficiaries.

The Department noted further that the *Less Formal Township Establishment Act* and the *Development Facilitation Act* were enacted to accelerate the township establishment process which, inter alia, would help ensure more widespread timely deed registration. However, these laws have not, in reality, had this effect.

As a case in point of a blocked township register resulting in no registration of title deeds, the Department of Human Settlements notes the example of the Attridgeville Extension 17 from 1997. The local municipality purchased land and a design of the township was completed and submitted. However, a portion of the land included in the design turned out to be owned by the province. A central requirement that land ownership be consolidated did not occur. Ultimately, 700 subsidised houses were built (and were fully occupied) but there is no Township Register to undertake the registration of title deeds. The upshot was 700 households with no registered title deeds.

¹⁰ Department of Human Settlements: Briefing and presentation to the Portfolio Committee on Human Settlement on the issue of issuing title deeds: 26 May, 2010

2) Delays in Transferring to Individual Owners: The FinMark Trust, Workings of Township Property Markets, Cadastral Review (Shisaka, 2004) identifies this problem and indicates that it applies differently to first and second generation property owners:

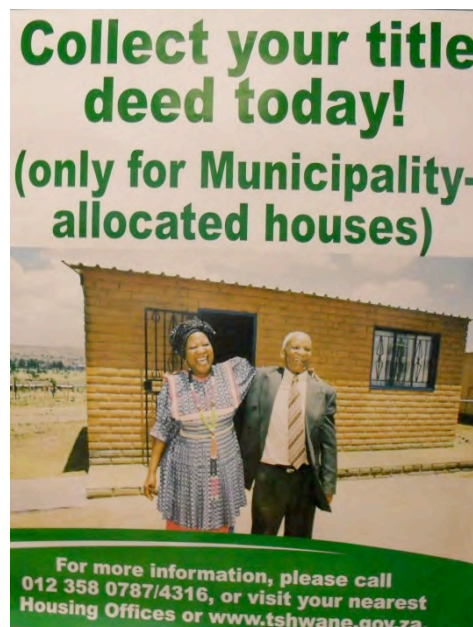
- In the case of first generation owners (i.e. the primary registration) the property is required to be valued and a municipal account opened. The primary registration is the first registration of an erf to an individual in the Deeds Registry and is likely to be the one that is most applicable to beneficiaries of subsidy housing. There appears to be failure or significant delays by municipalities in valuating township properties and in opening municipal accounts.
- With respect to the second generation the key delay factor is municipal arrears which prevent the issuing of clearance certificates. Without a clearance certificate transfer cannot occur.

The Banking Association of South Africa, Research into Housing Supply and Functioning Markets, Resource Report 7, Secondary Markets (2005), outlines the following factors which could delay the registration of a bond or transfer¹¹. These were identified by MortgageSA, a South African mortgage originator:

- *Failure by the seller and/or buyer to provide information*
- The existing bondholder delaying/not providing cancellation figures and Title Deeds to the transferring attorney
- Delay in receiving rates figures (municipality) and/or clearance certificate
- *Failure by the buyer to pay a deposit (if required)*
- Delay in the provision of guarantees
- Failure by the buyer to pay bond and transfer costs on time
- Delay by the seller in signing the transfer documents
- *Delay by the buyer in obtaining government capital subsidy approval/employee subsidy documents for new bondholders and failure to comply with other requirements of the bank*
- *Delay by the buyer in signing the transfer and/or bond documents*

The ones shown in italics are relevant to RDP housing projects.

3) Collection of documents: In its presentation to the Parliamentary Portfolio Committee on Human Settlements in May, 2010 the Department of Human Settlements (DHS 2010) noted that many beneficiaries had still not collected their title deeds after they had been processed (and after having resided in the premises several years). This could be as a result of a lack of understanding of the importance of a title deed. To their credit some public authorities, including the City of Tshwane (see picture on right), have made significant efforts to encourage RDP beneficiaries to collect their deeds.



4) Provincial Governments not closing out projects: The BNG Review report (2009) notes that many provincial government-managed projects were not being closed out properly. In many

¹¹ From MortgageSA website: http://www.mortgagesa.com/legalservices/conveyancing_process.asp

projects conveyancers dealing with such projects were found to have either submitted incorrect information for the registering of properties or not to have submitted documentation on at all.

- 5) **Inefficiencies in the Deeds Registry:** The Department of Human Settlements¹² indicates that there are numerous administrative and other issues at the deeds registry offices. On such issue is a frequent delay by the deeds office in the delivery to the project management team (or municipal / provincial office) of the deed documents once they have been registered. Documents lodged at the deeds registry are often returned to the conveyancer due to supposed mistakes or omissions. In many cases the Department reports that such mistakes are not substantial and should in no way invalidate the document. Such failed registrations are often not relogged by the conveyancer, possibly due to resource and capacity restraints. The Department indicates that there have been cases in which documents were rejected up to four times.
- 6) **Conveyancer holding back documents**¹³: Registered title deeds are sometimes held back by the conveyancer due to non-payment of fees by the project owner, which is usually the province or municipality (or a contractor appointed by such). Also, while the conveyancer is usually guaranteed that the municipality will pay for the opening of township registers, the municipality will not usually guarantee that it will pay the costs for registration of transfers. This work would be then done at risk by the conveyancer who may be reluctant to proceed on that basis.
- 7) **Poor performance by state attorneys**¹⁴: The Department of Human Settlements argues that the practice of provinces using state attorneys is proving too slow and contributes to the blockages.
- 8) **Inefficiencies within Municipalities**¹⁵: The Department of Human Settlements notes that a range of administrative problems and poor practices on the part of the municipality also contribute to the blockages. There are sometimes flaws in the site allocation lists provided by the municipality (which advise to which erf the beneficiary is to be registered). There are many cases of beneficiaries being allocated more than one stand while a single stand is sometimes allocated to two different beneficiaries. There are also cases in which stands have been allocated to people who were found not to qualify for housing subsidies and had their applications rejected.
- 9) **Inefficiencies by Project Managers:** The Department of Human Settlements argues that project managers themselves can sometimes contribute to delays by not forwarding invoices to the department upon completion of work and/or not making payment to the consultant upon receipt of funds from the department
- 10) **Inefficiencies within national Government**¹⁶: The Department of Human Settlements acknowledges that there are flaws in its own beneficiary administration process noting the need for new measures to ensure the accuracy and completeness of the beneficiary information captured in order to improve the integrity of the title deeds registration process. The Department

¹² Department of Human Settlements: Briefing and presentation to the Portfolio Committee on Human Settlement on the issue of issuing title deeds: 26 May, 2010

¹³ Department of Human Settlements: Briefing and presentation to the Portfolio Committee on Human Settlement on the issue of issuing title deeds: 26 May, 2010

¹⁴ Department of Human Settlements: Briefing and presentation to the Portfolio Committee on Human Settlement on the issue of issuing title deeds: 26 May, 2010

¹⁵ Department of Human Settlements: Briefing and presentation to the Portfolio Committee on Human Settlement on the issue of issuing title deeds: 26 May, 2010

¹⁶ Department of Human Settlements: Briefing and presentation to the Portfolio Committee on Human Settlement on the issue of issuing title deeds: 26 May, 2010

also identifies the need to develop uniform processes to record and report on the title deeds, the registration process and the handing over of title deeds to the owners of subsidised houses.

While it is necessary to understand and resolve the reasons for the delay in transferring title to individuals who are allocated subsidy houses, this is not the full extent of the problem. The issue of resolving the transfer of title years after the house was allocated to an individual also needs to be addressed. The problem of title not being transferred at the time of sale or allocation to an individual is not easy to resolve, in that it is not just a matter of redressing the issue. In order to transfer title to the owner of the property, it is necessary to ensure that the individual to whom the property was awarded is still the same individual that resides in the house. Accordingly, it is necessary to determine if the original owner did not sell the property informally, or died, or simply moved on.

One of the causes of the informal sale of properties is thought to be the current legal restriction on selling a subsidy property. Section 10A of the Housing Act, 1997 outlaws the sale of state-subsidised properties for a period of 8 years. This forces owners who want to sell to do so informally.

Both Lizette Killbourne in Resource Report 7: Secondary Markets (2005) and Leslie Downie (2011) look at the complexity and difficulties that arise once informal selling has occurred on a property. Issuing title or transferring title on a property where previous sales were informal is significantly more complex administratively and more costly than normal sales. Downie (2010:3) concludes that this is “the consequence of a legal system which becomes dysfunctional when applied in the context of the poor.”

The Department of Human Settlements¹⁷ also recognises this problem and identifies that a number of difficulties can occur as a consequence of the often lengthy delay between a beneficiary receiving an approved subsidy, being allocated a stand and the registration of transfer. These delays serve to further complicate the final phase of deed registration. It is not uncommon, for example, for an approved beneficiary to be un-contactable upon the attempted allocation of title. In other instances after allocation when the registration of title is finally made the beneficiary may have sold or rented out his/her house or may have died. Clearly, title deeds cannot be given to a non-beneficiary.

¹⁷ Department of Human Settlements: Briefing and presentation to the Portfolio Committee on Human Settlement on the issue of issuing title deeds: 26 May, 2010

5.0 The extent of the problem

There is currently very little information available as to the extent of the problems. Set out below is the best estimates available through existing documentation.

The Department of Human Settlements (then Housing) report 'Breaking New Ground' (2009) indicates that 'hundreds of thousands of RDP houses have been delivered without the corresponding registration of formal title'. The report estimates that at least 35% of subsidised houses - some 900 000 units at the time of the report - had been delivered without the registration of formal title.

Drawing on research by Rust (2008) the report expresses concern at findings which show a major reduction in the number of transfers of title from 2004 onwards. Using proxy indicators Rust (2008) showed that in 2007, for example, only 14 177 subsidised property registrations were made. Yet between 2002 and 2008 the then Department of Housing subsidised an average of 180 000 home constructions per annum.

There are a number of provincial investigations that provide insight into the extent of the problem including¹⁸:

- In the Eastern Cape a survey of subsidy housing indicated that transfers were outstanding for more than 12 months in that Province due to delays in the township establishment process.
- In Gauteng a survey undertaken by Servcon had established that over 25,000 beneficiaries had taken occupancy of their RDP home but had not received title deeds.
- A Limpopo survey showed that 10 473 beneficiaries have taken occupancy of their RDP homes without deeds of transfer being issued.
- Mpumalanga was experiencing particular difficulties in registering deeds as most of the townships were not proclaimed and developments are located in rural areas.
- In the Northern Cape a survey undertaken in October 2007 found that 2628 RDP beneficiaries did not possess title deeds.
- An investigation commissioned by the Housing Directorate of the City of Cape Town in 2010 probed the rate of title deed transfer of subsidised-housing beneficiaries in projects completed before 2000 (South African Cities Network, 2010). A total of 12 631 erven were surveyed (in nine housing projects) and of these 5, 256 deeds had still not been transferred. This represents a rate of 58 per cent of completed transfers. This result needs to be considered in context in that no projects completed from 2000 were surveyed. The results were geographically uneven with approximately 90 percent of the outstanding transfers traced to three of the nine projects. The investigation found further that many beneficiaries were not contactable, others had died while many others had informally sold their properties. Importantly, the City acknowledged the negative impact of non-transfer of houses to the beneficiaries as having a negative impact on the entire community.

With respect to informal transactions, the Township Residential Property Markets (TRPM) report (Shisaka, 2004) concluded that there was likely to be a considerable informal secondary market for RDP houses and for other sub-markets. Numerous sources make similar conclusions and as recently

¹⁸ Response by the Minister of the Department of Human Settlements, in November, 2008 to a question put to him on title delays (Parliament of South Africa)

as November, 2010 the Office of the Register of Deeds itself concluded that *“RDP houses are sold almost every day, even though such transactions are illegal.”*¹⁹

¹⁹ Mrs De Klerk, Office of the Register of Deeds in a formal briefing to the Parliamentary Portfolio committee on Human Settlements, 5 November 2010

6.0 Recommendations to resolve the problem

Over the past 15 years there have been a number of reports which have made recommendations as to how to address the issue. These are set out below in chronological order:

- 1) FinMark Trust, *Workings of Township Property Markets, Cadastral Review* (Shisaka, 2004): This report notes that there is a need to adjust the existing deeds registration system so as to deal effectively with the enormous backlogs that exist, as well as to make it more appropriate and effective in respect of lower income property markets. The report further argues that a significant contributor to blockages in registering title and in transferring title is the absence of service providers in the affordable housing market. At the same time, service providers such as estate agents and mortgage originators that currently operate in the upper income segments of the market would need to change their methodologies considerably in order to offer services that would be relevant to the affordable market. The report further urges that people be encouraged and enabled to proactively make application for title registration rather than to passively sit out the often lengthy processing times.
- 2) The Secondary Markets report (2005) recommends that title deed inaccuracies are corrected and that properties encumbered by multiple informal transactions should be resolved in order to ensure that the title deed has a former 'owner'. The report further recommends that the problem of individuals accessing the required documentation for the transfer process should be resolved including personal documents through the Department of Home Affairs.
- 3) The Breaking New Ground plan released in February 2009 concluded that: "*There is an urgent need for a focused intervention concentrated around providing title deeds for state-provided houses.*" The report recommended that the Department of Human Settlements (DHS) implement a monitoring system at project close-out in which a dwelling not be considered "delivered" or included in official statistics until all the conveyancing requirements have been completed. The report also recommended that the Department of Human Settlements works jointly with the Department of Land Affairs and Deeds Registries "to ensure that the backlogs in title are resolved urgently." (The relevant department is now Rural Development and Land Reform). Warning that there was a limited window of time to act before the backlog situation became unmanageable the report urged the Department of Human Settlements to consider placing a 'marker' on the title deed of RDP units to identify them as such and thus facilitate monitoring of the registration process.
- 4) In its presentation to the Parliamentary Portfolio Committee on Human Settlements in May, 2010 the Department of Human Settlements (DHS 2010)) emphasised the fundamental importance of title deeds in terms of security and tenure. However, DHS also noted that many beneficiaries had still not collected their documents after they had been processed (and after having resided in the premises several years). The Department therefore identified the need for:
 - DHS to coordinate an early warning system link with the Deeds Office to inform them to expect an influx of registration;
 - a community awareness program to be implemented around the importance and value of title deeds;
 - an investigation be undertaken to examine alternative ways of processing title deeds that are less time-consuming and cumbersome.

- 5) A report detailing the struggle for home ownership by residents of the Cape Town New Crossroads district (Urban LandMark, 2010) identifies that the knowledge gap in some communities in terms of property and ownership rights and responsibilities has created stumbling blocks in terms (inter alia) of titles and registration. The New Crossroads report (Urban LandMark, 2010) suggests that there is a substantial gulf between beneficiaries and the deeds office due to knowledge gaps and low civic competence.. Downie (2010) emphasises the need to administer the systems in such a way so as to maximize accessibility for low-income housing consumers. She contends that a reason for the complexity regarding the absence of the documentary proof required by conveyancers is found in the fact that such transactions occur in a context of low-literacy. Extrapolating from the New Crossroads report (and other sources) one could also include that low civic competence, coupled with low levels of understanding of legal transaction and bureaucratic processes, also contribute to this complexity.

- 6) A case example of the Overstrand Municipality's objective to improve title deed service delivery is cited by Downie (2010) in the context of ensuring access. Part of the Municipality's efforts in this regard has been to overhaul housing record-keeping systems. Recognizing that many people who need access to housing records have low levels of literacy. The Municipality intends to compartmentalize hard files according to colours so that beneficiaries with low levels of literacy can better navigate their ways through documents.

7.0 Conclusions

On the basis of the Desktop Review the following issues are identified to be discussed during the interviews with stakeholders:

- 1) Whether or not 9 deeds registries are operating and the challenges that they face.
- 2) Clarification on the delays in transferring title to subsidy beneficiaries. In this regard the focus should be on:
 - Current issues: The key factors that are currently restricting the transfer of title and the extent to which this is a problem. Particularly are the issues still those as reflected in the Desktop Review or are there new and additional ones.
 - Historical: To obtain a clearer understanding of the issues that are faced in transferring title to those beneficiaries who have had occupation of the property for a long time.In undertaking the interviews the focus will be on trying to distinguish between conventional options and possible innovative options for resolving problems and backlogs.
- 3) Obtaining greater clarity on the extent of the problem.

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