

**DEPARTMENT OF LOCAL GOVERNMENT AND HUMAN
SETTLEMENTS**

**POLICY FOR BENEFICIARY
MANAGEMENT**

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ABBREVIATIONS

| ABBREVIATION | FULL DESCRIPTION |
|--------------|---|
| ADR | Alternative Dispute Resolution |
| DRP | Dispute Resolution Panel |
| FLISP | Financed Linked Institutional Subsidy Programme |
| HSDG | Human Settlement Development Grant |
| HSS | Housing Subsidy System |
| ITA | Income Tax Act |
| LGHS | Local Government and Human Settlements |
| MEC | Member of the Executive Council |
| NHBRC | National Home Builders' Registration Council |
| NHNR | National Housing Needs Register |
| NHSDB | National Housing Subsidy Data Base |
| PD | Provincial Department |
| SAPS | South African Police Service |

DEFINITIONS

Adjudication refers to a hearing held by legally qualified practitioners appointed by the head of the provincial Department of Human Settlements on matters of disputes regarding claims to the rights to ownership of government subsidy financed houses.

Adjudicator refers to a legal practitioner appointed by the Head of the Provincial Human Settlements Department to serve on a panel of adjudicators to preside over disputes regarding claims to the right to ownership of government housing subsidy financed houses.

Affected property refers to a residential property that was allocated to a housing subsidy scheme approved beneficiary but transfer of ownership has not realised and the property still belongs to the municipality or the provincial government as the case may be and in respect of which claims to the right to ownership has been received from persons other than the approved beneficiary.

Applicant refers to a person who has tendered a housing subsidy application and the application has not been approved or was rejected.

Appeal Adjudicator refers to a legal practitioner appointed by the Head of the Provincial Human Settlements Department to serve on a panel of appeal adjudicators to preside over appeal applications lodged by persons who are not satisfied with the ruling of the Adjudication Panel regarding claims to the right to ownership of government housing subsidy financed houses

Approved beneficiary claimant refers to a person who has lodged a claim to the right to ownership of a Government subsidy financed residential property.

Contractual commitment refers to cases where the organ of the State signed a deed of sale with, or issued a deed of grant in favour of the approved beneficiary.

Deed of Grant refers to a legal binding deed in terms of which a subsidy financed property is granted to an approved beneficiary with the conditions and provisions of which will be converted into the title deed in the Office of the Registrar of Deeds once transfer of ownership will be registered.

Deed of Sale refers to a legal binding agreement of sale concluded with an approved beneficiary for the sale of the subsidy financed property to the beneficiary where transfer is deferred until the township is proclaimed.

Delegation refers in terms of the Housing Act, Act 107 of 1997, Part 3, Section 7, Sub-sections (1), (2), (3) and (5):

- (1) Every provincial government, through its MEC, must after consultation with the provincial organizations representing municipalities as contemplated in section 136(a) of the Constitution, do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy.*
- (2) For the purposes of sub-section (1) every provincial government must through its MEC:*
 - (a) determine provincial policy in respect of housing development;*
 - (b) promote the adoption of provincial legislation to ensure effective housing delivery;*
 - (c) take all reasonable and necessary steps to support and strengthen the capacity of municipalities to effectively exercise their powers and perform their duties in respect of housing development;*
 - (d) co-ordinate housing development in the province;*
 - (e) take all reasonable and necessary steps to support municipalities in the exercise of their powers and the performance of their duties in respect of housing development;*
 - (f) when a municipality cannot or does not perform a duty imposed by this Act, intervene by taking any appropriate steps in accordance with section 139 of the Constitution to ensure the performance of such duty; and*

(g) prepare and maintain a multi-year plan in respect of the execution of the province of every national housing programme and every provincial housing programme, which is consistent with national housing policy and section 3(2)(b), in accordance with the guidelines that the Minister approves for the financing of such a plan with money from the Fund.

(3) An MEC must:

(a) administer every national housing programme and every provincial housing programme which is consistent with national housing policy in section 3(2)(b), and for this purpose may, in accordance with that programme and the prescripts contained in the Code, approve:

(I) any projects in respect thereof; and

(II) the financing thereof out of money paid into the provincial housing development fund as contemplated in section 12(2);

(b) determine provincial housing development priorities in accordance with national housing policy;

(c) apply procurement policy in respect of housing development determined by the Minister in terms of section 3(2)(c); and

(d) administer the assets contemplated in section 14.

(4) The MEC may, subject to conditions he or she may deem appropriate in any instance:

(a) delegate any power conferred on him or her by this Act; or

(b) assign any duty imposed upon him or her by this Act,

to an officer or employee of the department responsible for the administration of housing matters in a province, either in her or her personal capacity or by virtue of the rank he or she holds or the post he or she occupies: Provided that the delegation or assignment does not prevent the person who made the delegation or assignment from exercising that power or performing that duty to himself or herself.

Deregistration, or the cancellation of registration of transfer refers to a process whereby a name of a property owner is removed from the title deed and the Deeds Register of the Chief Registrar of Deeds.

Developer refers to the organ/institution planning and implementing human settlement developments.

Dispute refers to a disagreement or argument.

Dispute Resolution Panel refers to a Dispute Resolution Panel established under the Income Tax Act, Act 58 of 1962 is an Alternative Dispute Resolution mechanism for resolving the disputes relating to Transfer Pricing in International Transaction.

Duplicate dependant in the context of this Policy refers to a situation where the identity number of a financial dependant of a housing subsidy applicant appears on the HSS attached to another approved housing subsidy application.

Missing or untraceable beneficiary refers to a housing subsidy beneficiary whose application has been approved and the beneficiary cannot be traced to take occupation.

National Department refers to the National Department of Human Settlements.

Provincial Department refers to the North West Provincial Department of Local Government and Human Settlement and in specific the Chief Directorate: Housing Development.

Regularization of occupants refers to the decision taken after due process was followed to approve the allocation and transfer of ownership of an affected property to an non-approved occupant who must be a South African citizen or a person in possession of a Permanent Residence Permit, whether the occupant satisfy the housing subsidy qualification criteria or not.

Rightful beneficiary refers to the approved beneficiary as defined above.

Subsidy financed property refers to a residential property that was created through the application of any of the National Housing Programmes that confers registered ownership rights on approved housing subsidy beneficiaries as defined in the National Housing Code, 2009.

Title Deed refers to documentary proof of ownership in terms of the Deeds Registries Act 47 of 1937.

1. INTRODUCTION

Many qualifying beneficiaries have benefitted from various housing programmes created by Government across the country since the inception of the new housing regime in 1994. The approval of a subsidy and the subsequent awarding of housing benefits are based on an individual application lodged with the relevant Provincial Department and/or Local Municipality. The application would then be assessed against criteria per housing programme to determine whether the applicant will be able to benefit from an applicable subsidy or not.

The list containing names of possible applicants for housing benefits are sourced from Local Municipalities after due public participation processes which leads to the development of a Housing Chapter in Local Municipalities' Integrated Development Plans. This list automatically becomes the Local Municipalities' waiting list, of which should be verified by the Local Municipalities' housing officials in order for the waiting list to be credible and accurate. All applications are processed through the Housing Subsidy System which is centralized at the Provincial Department. The Housing Subsidy System also performs certain functions before an application for a subsidy can be approved, e.g. a deed search is performed to verify that the applicant has not benefitted from a housing subsidy before anywhere in the country.

Once an application is approved, the details of the qualifying beneficiary are captured on the Housing Subsidy System. This means that the beneficiary will only qualify for one type of housing subsidy and will therefore not receive any other housing subsidy in future.

Research and studies revealed that there is a substantial number of beneficiaries who have gone missing and/or cannot be traced through all possible means. Efforts through print media were made which yielded very little success in finding such beneficiaries. This situation is creating challenges and problems as houses left unoccupied attracts illegal occupation or misallocation which is a definite breeding ground for disputes.

National Housing Programmes benefits are directed by a set of qualification criteria which must be satisfied before a housing subsidy application can be approved. The qualification criteria *inter alia* determine that applicants must either be married, habitually cohabit with another person or if not married or cohabiting with another person, must have financial dependants.

It has also been reported that in certain municipalities where houses are under construction and nearing completion and ready for allocation to qualifying beneficiaries targeted by the development, allocation processes are stalled due to the detection of financial dependants of applicants who have already been recorded on the Housing Subsidy System as dependants of other approved beneficiaries.

LGHS was informed of instances where the applicant for a housing subsidy is unaware that the identity of his/her financial dependent that resides with the applicant or is in the legal care of the applicant has been used by another applicant to access the Housing Subsidy Scheme benefits. There have also been instances where the applicant has knowingly and willingly allowed another applicant to use the identity of his/her financial dependent to gain access to a housing subsidy financed property. Further there are instances where a beneficiary is missing and untraceable to take occupation after a subsidy house has been completed.

There have also been instances where cohabiting relationships have broken down and it remains LGHS obligation to ensure that all government property is safeguarded and allocated in a rational manner. Therefore LGHS should ensure that a justified allocation of property takes place in the benefit of all concerned.

2. PURPOSE OF THE POLICY

This policy is developed to provide guidelines in the Department of Local Government and Human Settlements to be followed by providing procedures in identifying rightful beneficiaries, providing procedures on the breakdown of cohabiting relationships, providing procedure to deal with duplicate dependants,

6. LEGISLATIVE MANDATE

6.1. The Constitution of the Republic of South Africa, Act 108 of 1996

The South African Constitution states that everyone has the right to access to adequate housing and makes it incumbent on the State to take reasonable legislative and other measures within its available resources to achieve a progressive realization of this right.

6.2. Housing Act, Act 107 of 1997

The Housing Act recognizes the Constitutional rights of the citizens of the country in terms of access to adequate housing and lays down strategic principles that apply to the development of housing across various housing programmes. It defines the roles, responsibilities and functions of National Government, Provincial Government and Local Government as well as the establishment of various Boards at a National and Provincial levels. It further described the funding of housing programmes.

6.3. Intestate Succession Act, Act 81 of 1987

This Act outlines processes that need to be undertaken in case a person dies without a will and testament or where the will and testament is not valid/null in void. It indicates that in the case of the afore-mentioned reasons, the deceased estate can therefore not be distributed accordingly to the provisions of a will in line with the principles of intestate succession. A person's estate/part of it can therefore be devolved by virtue of intestate inheritance and this Act regulates the shares in which persons will inherit from the *intestate tester*.

6.4. Housing Consumer Protection Measures Act, Act 95 of 1998

This Act makes provision for the protection of housing consumers and regulates the Home Building Industry in general. This Act establishes the National Home Builders'

Registration Council (NHBRC) and mandates the NHBRC to establish, promote and enforce technical and ethical standards in the home building industry.

6.5. Housing Code, 2009

This Code sets the underlying policy principles, guidelines, norms and standards which apply to the South African government's various housing assistance programmes introduced since 1994 and updated. Moreover, this legislation contains the various housing subsidy instruments such as the financial, incremental, rural, social and rental interventions that are available to assist low income households to access adequate housing.

6.6. Deeds Registries Act, Act 47 of 1937

This Act sets out laws relating to the registration of Deeds.

6.7. Administration of Wills Act, Act 66 of 1965

This Act consolidates and amend the Law relating to the liquidation and distribution of the estates of deceased persons, the administration of the property of minors and persons under curatorship, and of derelict estates; to regulate the rights of beneficiaries under mutual wills made by any two or more persons; to amend the Mental Disorders Act, 1916 and to provide for incidental matters.

6.8. Wills Act, Act 88 of 1997

This Act consolidates and amends the Law relating to the execution of wills.

7. ROLES AND RESPONSIBILITIES

The Policy will be implemented by the Chief Directorate: Housing Development in the North West Department of Local Government and Human Settlements.

8. DELIVERABLES OF THE POLICY

8.1. Procedures in the identification/tracing of rightful beneficiaries

Verifying occupancy

Provinces and municipalities will be required to as the first step in the process determine whether the rightful beneficiary is in occupation of the relevant property and if not to endeavour to trace the rightful beneficiary. A verification process must thus be undertaken to:

- 8.1.1. Determine which properties were developed through funding available under the HSDG in terms of the provisions of the National Housing Programmes that confer registered ownership on approved beneficiaries that have not been transferred to the rightful beneficiaries;
- 8.1.2. The HSS and housing subsidy approval processes will have to be evaluated to determine:
 - 8.1.2.1. Whether the properties were officially allocated;
 - 8.1.2.2. Whom were they allocated to
 - 8.1.2.3. Were housing subsidy application forms submitted and considered;
 - 8.1.2.4. Were subsidy applications approved and if so;
 - 8.1.2.5. In favour of whom; and
 - 8.1.2.6. Was a Deed of Sale concluded or a Deed of Grant signed and issued.
- 8.1.3. These properties will therefore still be registered in the ownership of the municipality or provincial Government;
- 8.1.4. It must also be established whether the township establishment process has been concluded. If not, this process must be immediately attended to;

- 8.1.5. If the organ of the state concluded a Deed of Sale or a Deed of Grant was issued in favour of the rightful beneficiary, and it is verified that the beneficiary is still alive, the transfer of the property in ownership of the rightful beneficiary must proceed, notwithstanding the fact that the beneficiary may no longer be in occupation of the dwelling;
- 8.1.6. The conveyancer to conclude the transfer of instruction of the Master of the High Court upon winding down of the estate;
- 8.1.7. In cases where Deeds of Sale were not concluded and/or Deeds of Grants were not issued and it was verified that the beneficiary is alive, the next step will be to undertake occupation verification initiatives on the identified properties to determine:
 - 8.1.7.1. Who is in occupation;
 - 8.1.7.2. If the approved beneficiary is not in occupation, how did the current occupant come to occupy the property;
 - 8.1.7.3. The profile of the occupants needs to be established- married or single, single with financial dependants, household income, relationship to approved beneficiary, any contractual agreements concluded between occupier and approved beneficiary, duration of occupation etc;
 - 8.1.7.4. Whether the occupant is to claim the right to ownership or not.

Scenarios that may require dispute resolution

- 8.1.8. In regard to the challenges experienced in transferring housing subsidy financed properties to their rightful beneficiaries, the following scenarios may be encountered where the rightful beneficiary is not occupying the relevant property:
 - 8.1.8.1. The approved beneficiary may have informally "disposed" off his/her property and a third party is occupying the property;
 - 8.1.8.2. The approved beneficiary is sub-letting his/her property to a third party without approval from the PD;

- 8.1.8.3. The approved beneficiary may never have received vacant occupation of the allocated property as the dwelling/property was invaded by a third party;
- 8.1.8.4. The approved beneficiary has passed away and family members are in occupation;
- 8.1.8.5. The approved beneficiary has passed away and a third party is occupying the property;
- 8.1.8.6. The approved beneficiary has passed away, there is no remaining spouse and the dwelling is occupied by minor children;
- 8.1.8.7. The approved beneficiary has divorced his/her spouse, the approved beneficiary has vacated the property and the spouse is in occupation of the property;
- 8.1.8.8. The marriage between the approved beneficiary and his or her spouse has collapsed and the beneficiary has vacated the property and the spouse is in occupation of the property, but divorce proceedings have not initiated or have not been finalised;
- 8.1.8.9. The same scenario as above exist but a third party is in occupation of the property;
- 8.1.8.10. The beneficiary was in a cohabiting relationship and has passed away and the cohabiting partner is now in occupation.
- 8.1.8.11. The beneficiary has abandoned the property and a third party took occupation, sometimes with the "approval" of councillors.

Contractual commitments: Deed of Sale/Deed of Grant cases

- 8.1.9. The conclusion of a Deed of Sale with or the issuing of a Deed of Grant in favour of a rightful housing subsidy beneficiary bestows specific property rights on the rightful beneficiary.

The rightful beneficiary is alive and no third party claims to ownership were received

8.1.10. In the scenarios listed above, where the approved beneficiary has acquired a legal right to the property through the conclusion of a Deed of Sale with the relevant organ of the State or the organ of the State has issued a Deed of Grant in favour of the beneficiary, and no claims to the right of ownership have been received from third parties, the beneficiary is alive and still married, the transfer of the property to such a rightful beneficiary must be prioritized. The organ of the State is obliged to honour the contractual commitment entered into with the beneficiary. These cases are thus not under dispute, notwithstanding the fact that the rightful beneficiary may not be in occupation of the relevant property.

Proof of an informal "sale transaction" is obtained

8.1.11. In cases where the rightful beneficiary is alive and still legally married or legally divorced and where a claim to the right to ownership of the property in respect of which a Deed of Sale was concluded or a Deed of Grant was issued has been received from a third party, such a case must first be investigated to establish the grounds on which such claims are based. The following may be encountered:

The property was "sold" within eight years of sale restriction provisions

8.1.11.1. Where documentary proof is received of a written "sale agreement" concluded between the rightful beneficiary and the claimant or third party and such a "sale transaction" was concluded within the first eight years

from the date on which the Deed of Sale between the organ of the State and the rightful beneficiary was concluded and/or the date on which the Deed of Grant was issued in favour of the rightful beneficiary, a breach of contract conditions has occurred. Where the Deed of Sale and/or Deed of Grant did not make provision for the sale restriction clause, the "sale transaction" between the rightful beneficiary and the claimant was inconsistent with the provisions and intent of Section 10A of the Housing Act, 1997 (Act No. 107 of 1997).

- 8.1.11.2. The MEC must issue a written notice to the rightful beneficiary that a breach of contract conditions has occurred or that the property was disposed off inconsistent with the provisions of the Housing Act, 1997 and that the Deed of Sale/ Deed of Grant is forthwith terminated.
- 8.1.11.3. The re-allocation of the property must now be considered and each case must be evaluated based on the merits thereof and the details of the informal transaction that have been concluded between the previous rightful beneficiary and the claimant to the ownership of the property. The re-allocation of the property must be subjected to the provisions of the Housing Subsidy Scheme.
- 8.1.11.4. Where the applicant satisfies the Housing Subsidy Scheme qualification criteria, the property can be allocated and transferred to the applicant.
- 8.1.11.5. Where the applicant does not satisfy the said qualification criteria, the MEC may decide not to approve the application and follow the prescribe eviction process and re-allocate the property to a qualifying beneficiary. Or the MEC may decide to allocate and sell the property to

the occupant at input cost where the income of the occupant is less than R7 000 per month and/or at market value where the income of the occupant is in excess of R7 000 per month. All such sales must be cash sales. If the applicant satisfy the qualification criteria of the Finance Linked Individual Housing Subsidy and can successfully apply for a mortgage loan, the MEC may approve a FLISP subsidy application tendered by the applicant to be used to purchase the property. The fact that the occupant has paid a "purchase price" to the rightful beneficiary is of no concern to the organ of the State.

- 8.1.11.6. Where the occupant is the current owner of another residential property, the application must be rejected and notice must be issued to vacate the property and the property must be allocated to the next beneficiary in line for housing assistance. If the occupant fails to vacate the property as requested, legal action should be pursued to evict the occupant.

The property was "sold" after the lapse of the sale restriction period

- 8.1.11.7. Where documentary proof is received that a written "sale agreement" was concluded between the rightful beneficiary and the claimant or third party and such a "sale transaction" was concluded after the first eight years from the date on which the Deed of Sale between the organ of the State and the rightful beneficiary was concluded and/or the date of the Deed of Grant issued in favour of the rightful beneficiary, the informal "sale transaction" could be regarded as being consistent with the sale restriction provisions. Therefore the termination

providing procedures to register rightful heirs upon the death of beneficiaries, and by providing procedures in the tracing and deregistration of missing/ untraceable beneficiaries.

3. SCOPE OF APPLICATION

This policy will apply in the following instances:

3.1. The identification or tracing of rightful beneficiaries.

3.2. The breakdown of cohabitation relationships.

3.3. Duplicate Dependants of Government Subsidised Houses:

3.3.1. To single applicants of housing subsidies who have willingly allowed another person to fraudulently utilise the identity particulars of their financial dependants to gain access to housing subsidy benefits;

3.3.2. To single applicants who have tendered housing subsidy applications utilising the identity particulars of another person's financial dependants to gain approval of the application;

3.3.3. To single applicants who have tendered housing subsidy applications utilising the identification particulars of their legal financial dependants whose particulars are registered on the HSS against another approved housing subsidy beneficiary's approved subsidy and the applicant is unaware that such an approved beneficiary has utilised the identification particulars of his/her financial dependants to gain access to the housing subsidy benefits;

3.3.4. To beneficiaries of approved housing subsidies who have provided other persons access to the identity particulars of their own financial dependants to allow such persons to apply for housing subsidies.

3.4. Deregistration of missing/untraceable beneficiaries

- 3.5. Deregistration of deceased beneficiaries and re-registration of rightful heirs.

4. OBJECTIVES OF THE POLICY

The objectives of this policy are to provide procedures to:

- 4.1. Deregister deceased, missing or untraceable beneficiaries.
- 4.2. Regularize issues surrounding duplicate dependants.
- 4.3. Re-registration of rightful heirs.
- 4.4. Regularize registration in the breakdown of cohabiting relationships.

5. POLICY PRINCIPLES

The North West Provincial Beneficiary Management Policy is underpinned by the following policy principles:

- 5.1. Human dignity should be upheld, especially regarding the distinct needs of vulnerable groups such as women, children, the elderly and people with disabilities.
- 5.2. Effectiveness, efficiency and sustainability should be pursued in choice and method of intervention, as well as the careful utilization of funds to ensure value for money.
- 5.3. Constant open communication with beneficiaries in order for them to understand and be informed about what level and quality of assistance they will receive from the Department.
- 5.4. Processes that are to be followed under this Policy should be open and transparent at all times.

6. LEGISLATIVE MANDATE

6.1. The Constitution of the Republic of South Africa, Act 108 of 1996

The South African Constitution states that everyone has the right to access to adequate housing and makes it incumbent on the State to take reasonable legislative and other measures within its available resources to achieve a progressive realization of this right.

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This Act outlines processes that need to be undertaken in case a person dies without a will and testament or where the will and testament is not valid/null in void. It indicates that in the case of the afore-mentioned reasons, the deceased estate can therefore not be distributed accordingly to the provisions of a will in line with the principles of intestate succession. A person's estate/part of it can therefore be devolved by virtue of intestate inheritance and this Act regulates the shares in which persons will inherit from the *intestate tester*.

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- 8.1.1. Determine which properties were developed through funding available under the HSDG in terms of the provisions of the National Housing Programmes that confer registered ownership on approved beneficiaries that have not been transferred to the rightful beneficiaries;
- 8.1.2. The HSS and housing subsidy approval processes will have to be evaluated to determine:
 - 8.1.2.1. Whether the properties were officially allocated;
 - 8.1.2.2. Whom were they allocated to
 - 8.1.2.3. Were housing subsidy application forms submitted and considered;
 - 8.1.2.4. Were subsidy applications approved and if so;
 - 8.1.2.5. In favour of whom; and
 - 8.1.2.6. Was a Deed of Sale concluded or a Deed of Grant signed and issued.
- 8.1.3. These properties will therefore still be registered in the ownership of the municipality or provincial Government;
- 8.1.4. It must also be established whether the township establishment process has been concluded. If not, this process must be immediately attended to;

- 8.1.5. If the organ of the state concluded a Deed of Sale or a Deed of Grant was issued in favour of the rightful beneficiary, and it is verified that the beneficiary is still alive, the transfer of the property in ownership of the rightful beneficiary must proceed, notwithstanding the fact that the beneficiary may no longer be in occupation of the dwelling;
- 8.1.6. The conveyancer to conclude the transfer of instruction of the Master of the High Court upon winding down of the estate;
- 8.1.7. In cases where Deeds of Sale were not concluded and/or Deeds of Grants were not issued and it was verified that the beneficiary is alive, the next step will be to undertake occupation verification initiatives on the identified properties to determine:
 - 8.1.7.1. Who is in occupation;
 - 8.1.7.2. If the approved beneficiary is not in occupation, how did the current occupant come to occupy the property;
 - 8.1.7.3. The profile of the occupants needs to be established- married or single, single with financial dependants, household income, relationship to approved beneficiary, any contractual agreements concluded between occupier and approved beneficiary, duration of occupation etc;
 - 8.1.7.4. Whether the occupant is to claim the right to ownership or not.

Scenarios that may require dispute resolution

- 8.1.8. In regard to the challenges experienced in transferring housing subsidy financed properties to their rightful beneficiaries, the following scenarios may be encountered where the rightful beneficiary is not occupying the relevant property:
 - 8.1.8.1. The approved beneficiary may have informally "disposed" off his/her property and a third party is occupying the property;
 - 8.1.8.2. The approved beneficiary is sub-letting his/her property to a third party without approval from the PD;

- 8.1.8.3. The approved beneficiary may never have received vacant occupation of the allocated property as the dwelling/property was invaded by a third party;
- 8.1.8.4. The approved beneficiary has passed away and family members are in occupation;
- 8.1.8.5. The approved beneficiary has passed away and a third party is occupying the property;
- 8.1.8.6. The approved beneficiary has passed away, there is no remaining spouse and the dwelling is occupied by minor children;
- 8.1.8.7. The approved beneficiary has divorced his/her spouse, the approved beneficiary has vacated the property and the spouse is in occupation of the property;
- 8.1.8.8. The marriage between the approved beneficiary and his or her spouse has collapsed and the beneficiary has vacated the property and the spouse is in occupation of the property, but divorce proceedings have not initiated or have not been finalised;
- 8.1.8.9. The same scenario as above exist but a third party is in occupation of the property;
- 8.1.8.10. The beneficiary was in a cohabiting relationship and has passed away and the cohabiting partner is now in occupation.
- 8.1.8.11. The beneficiary has abandoned the property and a third party took occupation, sometimes with the "approval" of councillors.

Contractual commitments: Deed of Sale/Deed of Grant cases

- 8.1.9. The conclusion of a Deed of Sale with or the issuing of a Deed of Grant in favour of a rightful housing subsidy beneficiary bestows specific property rights on the rightful beneficiary.

The rightful beneficiary is alive and no third party claims to ownership were received

8.1.10. In the scenarios listed above, where the approved beneficiary has acquired a legal right to the property through the conclusion of a Deed of Sale with the relevant organ of the State or the organ of the State has issued a Deed of Grant in favour of the beneficiary, and no claims to the right of ownership have been received from third parties, the beneficiary is alive and still married, the transfer of the property to such a rightful beneficiary must be prioritized. The organ of the State is obliged to honour the contractual commitment entered into with the beneficiary. These cases are thus not under dispute, notwithstanding the fact that the rightful beneficiary may not be in occupation of the relevant property.

Proof of an informal "sale transaction" is obtained

8.1.11. In cases where the rightful beneficiary is alive and still legally married or legally divorced and where a claim to the right to ownership of the property in respect of which a Deed of Sale was concluded or a Deed of Grant was issued has been received from a third party, such a case must first be investigated to establish the grounds on which such claims are based. The following may be encountered:

The property was "sold" within eight years of sale restriction provisions

8.1.11.1. Where documentary proof is received of a written "sale agreement" concluded between the rightful beneficiary and the claimant or third party and such a "sale transaction" was concluded within the first eight years

from the date on which the Deed of Sale between the organ of the State and the rightful beneficiary was concluded and/or the date on which the Deed of Grant was issued in favour of the rightful beneficiary, a breach of contract conditions has occurred. Where the Deed of Sale and/or Deed of Grant did not make provision for the sale restriction clause, the "sale transaction" between the rightful beneficiary and the claimant was inconsistent with the provisions and intent of Section 10A of the Housing Act, 1997 (Act No. 107 of 1997).

- 8.1.11.2. The MEC must issue a written notice to the rightful beneficiary that a breach of contract conditions has occurred or that the property was disposed off inconsistent with the provisions of the Housing Act, 1997 and that the Deed of Sale/ Deed of Grant is forthwith terminated.
- 8.1.11.3. The re-allocation of the property must now be considered and each case must be evaluated based on the merits thereof and the details of the informal transaction that have been concluded between the previous rightful beneficiary and the claimant to the ownership of the property. The re-allocation of the property must be subjected to the provisions of the Housing Subsidy Scheme.
- 8.1.11.4. Where the applicant satisfies the Housing Subsidy Scheme qualification criteria, the property can be allocated and transferred to the applicant.
- 8.1.11.5. Where the applicant does not satisfy the said qualification criteria, the MEC may decide not to approve the application and follow the prescribe eviction process and re-allocate the property to a qualifying beneficiary. Or the MEC may decide to allocate and sell the property to

the occupant at input cost where the income of the occupant is less than R7 000 per month and/or at market value where the income of the occupant is in excess of R7 000 per month. All such sales must be cash sales. If the applicant satisfy the qualification criteria of the Finance Linked Individual Housing Subsidy and can successfully apply for a mortgage loan, the MEC may approve a FLISP subsidy application tendered by the applicant to be used to purchase the property. The fact that the occupant has paid a "purchase price" to the rightful beneficiary is of no concern to the organ of the State.

- 8.1.11.6. Where the occupant is the current owner of another residential property, the application must be rejected and notice must be issued to vacate the property and the property must be allocated to the next beneficiary in line for housing assistance. If the occupant fails to vacate the property as requested, legal action should be pursued to evict the occupant.

The property was "sold" after the lapse of the sale restriction period

- 8.1.11.7. Where documentary proof is received that a written "sale agreement" was concluded between the rightful beneficiary and the claimant or third party and such a "sale transaction" was concluded after the first eight years from the date on which the Deed of Sale between the organ of the State and the rightful beneficiary was concluded and/or the date of the Deed of Grant issued in favour of the rightful beneficiary, the informal "sale transaction" could be regarded as being consistent with the sale restriction provisions. Therefore the termination

of the Deed of sale/Deed of Grant should not be pursued under such circumstances.

- 8.1.11.8. As no breach of the Deed of Sale/Deed of Grant provisions occurred and/or the provisions of the Housing Act, 1997 were not contravened, the property must first and foremost be transferred to the rightful beneficiary. The subsequent transfer of the property to the "informal buyer" must be regarded as a private matter between the rightful beneficiary and the "informal buyer". The organ of the State may thus not transfer the property to the "informal buyer" or claimant to the right to ownership of the property.
- 8.1.11.9. Where the rightful beneficiary could not be traced and he/she did not respond to the advertisements, the MEC must be approached to approve the cancellation of the Deed of Sale/Deed of Grant and a notice must be issued to the effect that the Deed of Sale/ Deed of Grant is cancelled before the allocation and transfer of the property to the "informal buyer" could be considered.
- 8.1.11.10. Where the rightful beneficiary is traced and he/she demands that the property be transferred in his/her ownership, the MEC is obliged to transfer the property to the beneficiary. The occupation and/or claims that the occupant may institute should be regarded as a private matter to be resolved between the property owner and the occupant/ informal purchaser.
- 8.1.11.11. The MEC must now be approached to obtain approval for the allocation and transfer of the property to the informal purchaser/occupant of the property. The allocation and transfer of the property must be administered on the same basis.

Proof of an alleged informal sale is not provided

- 8.1.11.12. Where the rightful beneficiary is alive, still legally married and/or legally divorced but not in occupation of the property and the occupant of the property claims the right to ownership to the property, but he/she failed to produce a copy of the alleged "informal Deed of Sale" concluded with the rightful beneficiary, the claim that the property was informally sold to him/her can't be verified and the transfer of the property to the rightful beneficiary must be prioritized. If the rightful beneficiary can't be traced, the process of tracing the beneficiary must be followed before the matter can be further pursued.
- 8.1.11.13. Where the beneficiary does not respond to the advertisements, the MEC must be approached to approve the formal termination of the Deed of Sale/Deed of Grant. The property may then be re-allocated and transferred to the occupant, if the occupant satisfies the Housing Subsidy Scheme qualification criteria. If the occupant does not satisfy the qualification criteria due to his/her previous home ownership status, he/she previously received housing assistance from the State or the occupant's income exceeds the current income limit, the MEC must sell the property at either input cost or market value as directed.
- 8.1.11.14. If the rightful beneficiary is traced, he or she has the right to claim ownership of the property and if so the property must be transferred to the rightful beneficiary. The "informal purchaser"/occupant of the property will have to institute civil procedures through a Court of law

to claim performance from the rightful beneficiary in terms of the alleged sale transaction.

Cases where no contractual commitments have been concluded other than the subsidy application approval

The Obligations of the organ of the State

- 8.1.12. It is reported that in most cases the allocation of housing subsidy financed properties was not followed by the conclusion of Deeds of Sale agreements and/or the issuing of Deeds of Grant.
- 8.1.13. The only obligation that has been established under these circumstances is the approval of the subsidy application by the MEC. This approval of the subsidy application established a firm obligation on the State to deliver a housing product to the approved beneficiary as promised. Under the circumstances the organs of the State have complied with their obligations and the houses were constructed and allocated to the beneficiaries. However, occupation of the allocated properties by their rightful beneficiaries has not realized in all cases. The organ of the State has also failed to transfer the properties to the rightful beneficiaries.
- 8.1.14. The approval of the housing subsidy application must be regarded as a firm obligation on the organ of the State to effect transfer of ownership of the subsidy financed property and the same processes as described in Section 8.1.1.1 to 8.1.7.4 should be applied and followed with the exception that the requirement to cancel the Deed of Sale and/or Deed of Grant falls away.
- 8.1.15. Therefore the same scenarios will be encountered and the first priority should always be to transfer the property to the rightful beneficiary. Where the property was informally sold by the

beneficiary it must be noted that the rightful beneficiary was not at liberty to alienate the property in respect of which only an allocation was approved and no contractual commitments were realised. The property belongs to the organ of the State and the beneficiary can't dispose of the property that does not belong to him/her.

- 8.1.16. Where the rightful beneficiary has vacated the property, the organ of the State must endeavour to trace the beneficiary and award him/her the opportunity to explain why he/she is not occupying the property and whether he/she would prefer to exercise the right to registered ownership. If confirmed and verified proof is received that the property was informally disposed of by the beneficiary and the informal purchaser claims the right to registered ownership, the MEC must establish from the rightful beneficiary why the property was sold, what amount was received as the sale price and why the property should not be transferred to claimant.
- 8.1.17. Where the rightful beneficiary who has informally "disposed" of the allocated subsidy financed property claims the right to registered ownership, the matter is under dispute and the processes described in Sections 8.1.1. must be pursued.
- 8.1.18. Where the rightful beneficiary can't be traced the same process must be followed.

Dealing with cases where no Deed of Sale was concluded or no Deed Grant was issued

- 8.1.19. If the beneficiary does not occupy the property and cannot be traced and/or no response to the notices has been received, and it is verified that the beneficiary is not deceased, an application must be

made to the MEC to cancel the original allocation and to re-allocate the property.

- 8.1.20. If the beneficiary is deceased, the property must be transferred to the estate of the deceased beneficiary or as directed by the Executor of the Estate.
- 8.1.21. If approval is received for the cancellation of the allocation, the Director: Management Information Systems in the National Department of Human Settlements must be informed of the decision and be requested to remove the allocation from the HSS and the NHSDB.
- 8.1.22. The original beneficiary may now be replaced with the next approved beneficiary and/or the current occupant of the dwelling if the occupant satisfies the requirements of housing subsidy qualification criteria.
- 8.1.23. The housing subsidy application will be subject to the normal qualification criteria evaluation and deed set searches.
- 8.1.24. If the current occupant does not satisfy the qualification criteria, the following may be applied:
 - 8.1.24.1. If the income of the occupant exceeds the income limit of R3500 per month, but is less than R7000 pm, the property must be offered to the occupant at a price equal to the original development cost of the property (land cost, services cost and top structure cost). If the income of the occupant is in excess of R7000 pm, the property must be offered to the occupant at the market value of the property. The market value of the property must be

determined based on the average of two *ad hoc* valuations from registered property assessors.

- 8.1.24.2. If the occupant is not in a position to pay the sale price, he/she must be advised to approach a financial institution with a home loan application and for this purpose a Deed of Sale subject to a suspensive condition, namely that a home loan must first be approved before the sale transaction is finalised, must be concluded with the occupant.
- 8.1.24.3. If the occupant qualifies for a FLISP subsidy, the occupant must be requested to apply for a FLISP subsidy and if the application is approved a certificate must be issued to a financial institution to confirm that a FLISP subsidy has been approved in principle and that funds have been set aside for the subsidy, should the home loan application be approved. The normal FLISP process will then apply.
- 8.1.24.4. If the occupant is found to be the owner of another property, the occupant must accordingly be informed that he/she has been disqualified from any access to housing subsidy assistance except rental housing options and that he/she must vacate the property within 60 days from the date on which the notice is served.
- 8.1.24.5. If the applicant fails to vacate the property, the organ of the State must apply for an eviction order. The allocation of the dwelling may now proceed to the next approved beneficiary.

8.2. Procedures in the event of a breakdown of a cohabiting relationship

- 8.2.1. The registration of the property must be done in the names of both parties to the co-habiting relationship.

8.2.2. In cases where the relationship has dissolved or one partner has died or gone missing, the registration of the title cannot be proceeded with. The existing agreement ceases to exist and a agreement must be entered into. It must be noted that proof must be submitted prior to a new agreement being entered into.

8.2.3. In the event of a cohabitation breakdown before the subsidy is approved and after the agreement has been signed, the agreement must be cancelled.

8.2.4. In the event of a cohabitation breakdown before the subsidy is approved and after the agreement has been signed and where there were dependants involved, the party that retains custody must enter into a new agreement for the property in question.

8.2.5. If the partnership dissolves after subsidy approval, but before registration takes place, the existing agreement ceases to exist.

8.2.6. During the subsidy application process, all co-habiting couples must provide additional documentary proof over and above the affidavit. This will serve to strengthen proof that the couple is in fact cohabiting. The following documents must be submitted as proof with the subsidy application:

8.2.6.1. A joint lease agreement or bank account; and

8.2.6.2. Supporting affidavit from a family member or neighbor.

8.3. Procedures to be followed when duplicate dependants are detected

Scenario 1: The Applicant declares that he/she was unaware of the fact that his/her financial dependants' identification particulars

were used by another housing subsidy applicant who gained access to the housing subsidy

8.3.1. Where the identity number of a financial dependant of a housing subsidy applicant is detected on the HSS, the subsidy application will be rejected. The applicant must be informed of the reason in writing why the application has been rejected namely that the identification particulars of one of his/her declared financial dependants have been detected on the HSS as being registered under an alternative approved beneficiary.

8.3.2. The applicant must be awarded the opportunity to respond to the findings. If the applicant indicates that he/she was unaware that the identity particulars of one of his/her financial dependants have been used by another housing subsidy applicant to gain access to the benefits of a housing subsidy, the details of the approved beneficiary linked to the registered dependants on the HSS must be conveyed to the applicant. This is required for purposes of laying criminal charges against the beneficiary by the applicant. This information must at least include:

8.3.2.1. The name of the approved beneficiary;

8.3.2.2. The date of approval of the subsidy application;

8.3.2.3. The property description of the relevant property: and

8.3.2.4. The details of the relevant dependants that have been registered on the HSS.

8.3.3. The applicant must be requested to immediately report the matter to the South African Police Service and lay charges of fraud against the beneficiary.

8.3.4. SAPS will require the applicant to complete an affidavit and the applicant will be issued with a case number of the complaint. This case number and a copy of the affidavit must be submitted to the Provincial Department of Local Government and Human Settlements.

8.3.5. The Provincial Department of Local Government and Human Settlements must now investigate the matter through a written request addressed to the approved housing subsidy beneficiary to respond to the allegations. The correspondence to the beneficiary must state that the identity particulars of the financial dependant that was declared in his/her subsidy application and that have been registered on the HSS against his/her housing subsidy application approval, are now claimed to belong to another housing subsidy applicant whose application is under consideration. The beneficiary must be requested to respond to the allegations made by the applicant that such identity particulars were fraudulently used by the approved beneficiary.

8.3.6. If the approved beneficiary responds and denies the allegations made by the applicant, the matter must be regarded as a dispute. Where the province has established dispute resolution structures as contemplated in the Guidelines for The Identification of The Rightful Housing Subsidy Beneficiaries to Enable Transfer of Ownership of Housing Subsidy Scheme Financed Properties, it may decide to refer the matter to the Dispute Resolution Panel for further attention and a ruling. If such a Panel has not been established the matter must be referred to the Dispute Resolution Panel for investigation and advice on how to proceed. The MEC to appoint the panel with an understanding that it is a Departmental Administrative body.

8.3.7. If the Dispute Resolution Panel/ Departmental Legal Division (if applicable State Attorney) Dispute Resolution Panel determines that the approved beneficiary has fraudulently utilized the identity

particulars of the financial dependants of the applicant to gain access to the benefits of housing subsidy, the application by the applicant must be reconsidered and be approved subject to the fact that the applicant must satisfy the remainder of the housing subsidy qualification criteria.

8.3.8. The Manager of HSS in the National Department of Human Settlements must be informed by the Department of Local Government and Human Settlements that the rejection of the application must be corrected and the application must be accepted.

8.3.9. The allocation and transfer of the new residential property to the applicant may now proceed.

8.3.10. In view of the ruling by the Dispute Resolution Panel, the Provincial Human Settlements Departments must now report the fraudulent conduct of the approved beneficiary to SAPS with all the documentary proof and the ruling by the Adjudication Panel and it must lay charges of perjury against the approved beneficiary.

8.3.11. If the approved beneficiary is found guilty of perjury, the MEC must be approached to approve the cancellation of the housing subsidy approval and request the Dispute Resolution Panel to deregister the transfer of ownership of the property and transfer the property back to the Provincial Government.

8.3.12. The affected property may now be re-allocated to the next housing subsidy beneficiary.

8.3.13. If the approved beneficiary fails to respond on or before a date indicated in the request by the Provincial Local Government and Human Settlements Department, the matter must be referred to

the State Attorney for investigation and legal action as may be required.

- 8.3.14. If the beneficiary refuses to vacate the property on the date indicated to do so, the State Attorney must be requested to apply for an eviction order.
- 8.3.15. The new beneficiary of the property must accept the used property in writing.
- 8.3.16. If the beneficiary's claim that the financial dependants are indeed his/her legitimate dependants is sustained, no further action against the beneficiary is warranted. The application tendered by the applicant is thus fraudulent and must be rejected. The HSS records must be adjusted to indicate that the applicant endeavoured to obtain access to the benefits of housing subsidies through fraudulently claiming that he/she has financial dependants.

Scenario 2: The applicant declares that he/she willingly allowed the beneficiary to utilize his/her financial dependants identity particulars for fraudulent purposes

- 8.3.17. Where the applicant willingly provided the identity of one of his/her financial dependants to another person to allow that person to gain access to housing subsidy benefits, the applicant must be informed that he/she will no longer qualify for the allocation of subsidy financed house as a single persons with financial dependents.
- 8.3.18. However if the single status of the applicant changes, the applicant may reapply for housing assistance. This application will be regarded a new application and will as such be recorded in the National Housing Needs Register.

- 8.3.19. The details of the applicant as registered in the National Housing Needs Register must be adjusted to reflect that the person will not qualify for a housing subsidy as a single person with financial dependants and that an application for a Government subsidized financed housing has been rejected. As soon as the applicant registers his/her need under changed status the entry in the National Housing Needs Register must be adjusted to reflect the date of registration.
- 8.3.20. The housing subsidy approval in respect of the beneficiary must now be cancelled. The Provincial Local Government and Human Settlements Department must obtain the MEC's approval to cancel the subsidy approval and if such approval is obtained, the State Attorney must be requested to investigate the matter and take legal action and pursue the matter until deregistration and transfer of the property back to the Provincial Government (as the case may be) has been achieved.
- 8.3.21. The beneficiary's details must be retained on the HSS and he/she will not be allowed to re-apply for a housing subsidy.
- 8.3.22. The actions described in Section 8.3.19 above must be preceded by properly giving notice to the beneficiary of the cancellation of the housing subsidy approval, the intended deregistration of the property and a notice to vacate the property. In the event the applicant acknowledges receipt the step in Scenario 1 will apply.

Scenario 3: The single housing subsidy applicant acknowledges that he/she has obtained the identification particulars of an approved housing subsidy beneficiary to gain access to benefits of housing subsidies

- 8.3.23. In this scenario the application must be rejected and the HSS records must be adjusted to reflect that the applicant endeavoured to fraudulently obtain approval of his/her housing subsidy.
- 8.3.24. However if the relevant applicant's single status changes he/she will be allowed to re-apply for a housing subsidy in future.
- 8.3.25. The MEC may decide to pursue charging the approved beneficiary on the basis of the allegations made by the applicant or may decide not to pursue the matter further.

8.4. Procedure to be followed in case a qualifying beneficiary passes on prior being allocated a completed house in that the National Guidelines on the Protection of the Rights to Subsidized Property of Descendants or Beneficiaries shall apply

- 8.4.1. If a deceased housing beneficiary left a spouse but no descendants, the surviving spouse would inherit all assets within the estate.
- 8.4.2. If a deceased left descendants but no spouse, the descendants would inherit the assets within the estate proportionately.
- 8.4.3. The deceased left both a spouse and descendants, the spouse and descendants would inherit proportionately.
- 8.4.4. If the deceased left no spouse or descendants, his/her parents would be next in line followed by their descendants. If they were indicated as dependants of the deceased at the time of approval.
- 8.4.5. If the deceased had a will in place, the Will applies only if it is according to the Wills Act no 88 of 1997.

The process of change of ownership from the deceased beneficiary to the rightful heir

- 8.4.6. The deceased family or anyone close needs to report the death of the main beneficiary to the Master High Court, in case an heir is a minor.
- 8.4.7. The Master of High Court appoints an executor to administer the deceased estate. The executor's function is to collect the assets including property of the deceased, pay any debts and thereafter distribute the inheritance to those entitled to such inheritance.
- 8.4.8. Drawing up the Liquidation and Distribution Account is the next step in finalizing the estate and is normally completed once all the relevant information and/ or documents and/ or credit payments requested when the estate was initially reported, have been received; this account reflects all the assets and liabilities in the estate, the cash and liquidity situation, administration costs and shows how the balance will be distributed to the heirs.
- 8.4.9. Once this account has been completed, it is forwarded to the Master of the High Court for examination. If the Master is satisfied with the contents of the account, he/she provides us with the necessary approval.
- 8.4.10. Where a person is entitled to property, the property will only be transferred in the deeds registry after the Master has approved the Liquidation and distribution account. The account has to go for inspection free from objection and after the Master has given the go ahead to the transfer. This transfer is thus a delay transfer as the transfer to heirs takes place at the end of the winding down of the deceased estate. A simple deceased estate can take at least 12 months plus to finalize.

- 8.4.11. To enable the Conveyancer to prepare the transfer documents, he will require the heir's details together with copies of the required documents, such as death certificates and identity number copies. After receiving all documents and the original Title Deed, the heirs will then be called upon to sign the documents in order to effect change of ownership.

8.5. Procedure on dealing with missing and or untraceable housing subsidy beneficiaries

- 8.5.1. Where the housing subsidy beneficiary is not present, not yet traced or confirmed as being alive, the Member of the Executive Council of Department of Local Government and Human Settlements must ensure that everything possible is done to locate the beneficiary and therefore a notice must be placed in the:

8.5.1.1. *Government Gazette*; and

8.5.1.2. once a week, for two [2] consecutive weeks, in a newspaper circulating in the area in which the property is situated.

- 8.5.2. If the beneficiary cannot be traced or cannot take occupation and no response to the notices is received, an application must be lodged with the High Court for the issue of an order, in terms of Section 6 of the Deeds Registries Act, Act No. 47 of 1937 , for the cancellation of the registration, in the name of the existing owner.

- 8.5.3. On receipt of this Court Order, LGHS must, through a conveyancer, lodge the relevant Court Order, together with an application for cancellation of registration, with the relevant Registrar of Deeds.

8.5.4. Such a de-registered owner may then be replaced with the next approved beneficiary, and, the housing subsidy application will be subject to the normal qualification criteria evaluation process.

8.5.5. Once the subsidy application is approved, the name of the new owner must be reflected as an endorsement on the original copy of the title deed.

Procedure to be followed when the beneficiary is traced

8.5.6. In a case where a housing subsidy beneficiary comes forward, after the period of fourteen [14] days of the notices has expired, but, the relevant person cannot, for reasons beyond his/her control, take occupation of the property that is registered in his/her name, the processes described in paragraph 7.5.1 must be followed.

Procedure to be followed when a beneficiary is not able to take occupation

8.5.7. Where the identity and whereabouts of a beneficiary is known but the relevant person cannot, for reasons beyond his/her control, take occupation of the property that is registered in his/her name, and an alternative property is to be allocated to such a person, the processes described in paragraph 7.5.1 will apply.

Procedure to be followed for interim utilization of a vacant subsidised house

8.5.8. To protect a vacant subsidized house from being vandalized, during the process of deregistration, an interim agreement can be entered into with an approved beneficiary. He/she is then granted temporary occupation of the vacant house, on condition that the occupation may be terminated at any time or, that the occupation might be formalized

pending the outcome of deregistration process and a successful housing subsidy application.

Financial implications of deregistration and re-registration

8.5.9. The deregistration costs, where a beneficiary is not traceable, should be borne by the Department of Local Government and Human Settlements and financed from Human Settlement Development Grant.

8.5.10. Deregistration and re-registration costs for a beneficiary, whose identity and whereabouts is known, should be considered by the relevant developer against prevailing circumstances that can be substantiated.

Effecting transfer of the subsidized house to the relevant beneficiary only after physical occupation

8.5.11. The Provincial Department of Local Government and Human Settlements to approve the sequence payments or sub-milestones to accommodate specific project implementation requirements. Developers will now be able to effect transfer of a house to a beneficiary on or after physical occupation of the house by the approved beneficiary solving the problems related to the process of registration of transfer before physical occupation is realized.

The national Housing Subsidy Database and the Housing Subsidy System

8.5.12. The deregistration of beneficiaries must be reported to the National Department of Human Settlements, with substantiating documentation, to enable the Department to effect the required

changes to the HSS and National Housing Needs Register (and where applicable).

8.6. Dispute Adjudicating Panel

8.6.1. The MEC appoints a panel comprising of the 1 Legal Director, 4 Regional Directors (Housing Development), 1 Policy Expert, 1 Deputy Director HSS, and 1 Director Subsidy and Administration.

8.6.2. The Dispute Adjudication Panel should have the following powers:

8.6.2.1. To consider and adjudicate claims to rights to ownership of Government housing subsidy financed properties.

8.6.2.2. To gather evidence on the matters related to such claims.

8.6.2.3. Call witnesses to give evidence on matters related to such claims; and to subpoena witnesses by serving proper notice to this effect to give evidence or submit documents related to the claims and or dispute.

8.6.3. The Dispute Adjudication Panel should fulfill the following functions:

8.6.3.1. The Dispute Adjudication Panel must ensure that all the parties to a claim to the right of ownership of a property are fully informed in writing by the secretariat regarding the establishment of the Adjudication Panel and its powers and the details of the claims to ownership of the relevant property that have been received and that will be adjudicated.

8.6.3.2. The notice must indicate the date and venue of the hearing and this notice must be given twenty one (21) days prior to the hearing date.

8.6.4. The Dispute Adjudication Panel must also give written notice on who may attend a specific hearing namely:

8.6.4.1. The claimants.

8.6.4.2. An interpreter to assist the claimant if required.

8.6.4.3. The ward councillor for the specific area of jurisdiction.

8.6.4.4. Officials from the municipality dealing with land and housing subsidy administration.

8.6.4.5. Officials from the Provincial Human Settlement Department dealing with land and housing subsidy administration.

8.6.4.6. Any person who are willing to give evidence or who can provide documents to substantiate a claim.

8.6.5. The Dispute Adjudication Panel must ensure that each and every hearing is properly constituted and that the proceedings are recorded and proper minutes are kept.

8.6.6. The Dispute Adjudication Panel should when the hearing is properly constituted commence the proceedings by:

8.6.6.1. Explaining the powers of the Panel.

8.6.6.2. The process that will apply leading up to the appeal process.

8.6.6.3. The rights and obligations of the claimants as well as the persons who will give evidence at the hearing.

8.6.6.4. Confirm that evidence will be given under oath.

8.6.6.5. Confirm all that evidence given will be recorded and reduced to a written record of the hearing which record will have the same status as the actual evidence given. Where the written recording of the proceedings failed for whatever reason, all evidence given will have to be resubmitted at the appeal process if this is applicable.

- 8.6.6.6. Confirm that a party to the proceedings shall not have the right to cross examine or questions any other party to the dispute or a witness called by a claimant.
- 8.6.7. The Adjudication Panel should conduct hearings in the following manner:
 - 8.6.7.1. Only the Dispute Adjudication Panel members will have the right to cross examination and questioning witnesses and/or claimants.
 - 8.6.7.2. The Dispute Adjudication Panel may however decide to permit a party to the hearing to pose a question to a witness and or claimant.
 - 8.6.7.3. After all the evidence was presented by all the parties, the Dispute Adjudication Panel should conclude the hearing by setting date for the delivery of a judgement on each case.
- 8.6.8. The Dispute Adjudication Panel should present a written judgement covering the following aspects to the Head of the Legal Section of the Provincial Human Settlements Department at least a week before the date set for the judgement:
 - 8.6.8.1. The property description as reflected on the general plan of the township and the title deed of the property.
 - 8.6.8.2. A description of the claimants to the right to ownership of the property.
 - 8.6.8.3. The evidence given at the hearing.
 - 8.6.8.4. A view on the credibility of the evidence that was presented at the hearing.
 - 8.6.8.5. Facts that are regarded proven.
 - 8.6.8.6. The legal position.
 - 8.6.8.7. The findings.

- 8.6.9. The Head of the Legal Section should verify that all the information as required has been presented and return the judgement to the Dispute Adjudication Panel with an indication of any shortcomings that require attention, is applicable. This must be done within five days from receipt of the judgement.
- 8.6.10. On the date set for the judgement, the Dispute Adjudication Panel must provide copies of the judgement to the claimants to the right to ownership of the properties.
- 8.6.11. The Dispute Adjudication Panel should at the commencement of the judgment proceedings confirm the process of appeal that may be opted for.
- 8.6.12. If, at the commencement of the judgement proceedings, a claimant wish to withdraw the claim or an indication is given by the claimants that a settlement agreement has been concluded, the Dispute Adjudication Panel must record such withdrawal and/or settlement. The Panel should then record the settlement or withdrawal notice and the claimants must sign the notice.
- 8.6.13. Where a claim is withdrawn and or a settlement is reached, there will be no appeal process or option.
- 8.6.14. Where the claim is not withdrawn and or no settlement has been concluded, the Dispute Adjudication Panel must deliver the judgement to all present.
- 8.6.15. Where the claimants fail to attend a judgment on the date set for such judgment delivery, the Dispute Adjudication Panel may proceed to deliver the judgment in the absence of the claimants if it is satisfied that proper notice of the judgment was given.

8.7. The Dispute Appeal Panel

8.7.1. The provincial Human Settlements Department should also appoint a Dispute Appeal Panel comprising three legal practitioners such as Advocates that are regarded experts in appeal procedures and processes as well as in property rights and who are or were not members of the Dispute Adjudication Panel.

8.7.2. The powers and functions of the Dispute Appeal Panel are:

8.7.2.1. To adjudicate an appeal submitted to it by a claimant against the judgment issued by the Dispute Adjudication Panel regarding the rights to ownership of a subsidy financed property.

8.7.2.2. To issue a judgment regarding the appeal that may either confirm the judgment issued by the Dispute Adjudication Panel or reject the judgment issued by the Dispute Adjudication Panel and replace such a rejected judgment with a final judgment regarding the claims to the right to ownership of the property.

8.7.3. The appeal procedures are:

8.7.3.1. An appeal against the judgment issued by a Dispute Adjudication Panel must be submitted to the Head of the Provincial Legal Section in the form of a written notice and within 30 days from the date on which the Dispute Adjudication Panel has issued the judgement.

8.7.3.2. The notice must contain the grounds upon which the appeal is been made plus the additional evidence to substantiate the appeal.

- 8.7.3.3. The Head of the Provincial Legal Section should immediately notify the Dispute Appeal Panel of the appeal that was received.
- 8.7.3.4. The Dispute Appeals Panel must now issue a notice to all affected parties- the appellant and the respondent, of the date on which a hearing will be conducted. Such a notice must be issued at least 21 days before the date on which the hearing will be conducted. A copy of the appeal must be provided to the respondent with the notice of the hearing.
- 8.7.3.5. The appeal hearing should follow the same process and procedures as applicable to the Adjudication Panel process with the changes required by the context.
- 8.7.3.6. The Dispute Appeal Panel must before the hearing commences confirm that the parties to the claim to the right of ownership and the appeal process may elect to apply to the High Court for a judgment on the matter.
- 8.7.3.7. An appeal hearing may proceed in the absence of the respondent if the Panel is satisfied that proper notice of the hearing date was issued.
- 8.7.3.8. In the case where the appellant fails to attend the hearing and the Panel is satisfied that proper notice of the hearing date was issued, the appeal may be scrapped by the Appeal Panel.

9. EFFECTIVE DATE OF THE POLICY

This policy shall come into effect from the date of approval.

10. POLICY REVIEW

This policy will be reviewed as and when changes are made in national legislation pertaining to the afore-mentioned beneficiary management policy prescripts.

11. APPROVAL

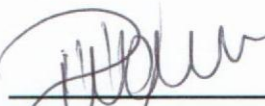
Policy Developer/s:



MS KV MALOKA

24/08/2017

DATE



MS HH DU PLESSIS

24/08/2017

DATE

Recommendation:



MR T PHETLHU

**CHIEF DIRECTOR: HOUSING NEEDS,
RESEARCH, PLANNING AND
TECHNICAL SERVICES**

31/08/2017

DATE



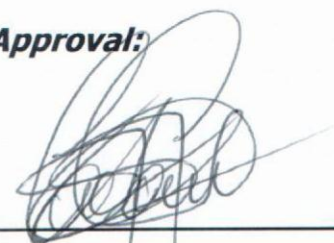
MR PE MOTOKO

HEAD OF DEPARTMENT

25/09/2017

DATE

Approval:



MEC GF GAOLAOLWE

28/09/2017

DATE

12. REFERENCES

- 12.1. Department of Human Settlements. 2004. *A Comprehensive Plan for the Development of Sustainable Human Settlements "Breaking New Ground"*. Department of Human Settlements: Pretoria.
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12.16. UN High Commissioner for Human Rights. 1948. *Universal Declaration of Human Rights.* OHCHR-UNOG: Switzerland.

APPENDIX A: REGISTER FOR ADMINISTRATIVE ACTION

Name of Department: **NW Department of Local Government and Human Settlements**

Name of Policy: **Beneficiary Management**

| A LINE NO | B POLICY / PROCESS / PROCEDURE DESCRIPTION | C ADMINISTRATOR- ROLES AND RESPONSIBILITIES / DECISION POINTS (VARIC) | | | | | D CONDITIONS / LIMITATIONS / COMMENTS (SMARTER) |
|--------------------------|--|---|--|--|---|---|--|
| | | C1 – Responsible and Execute Doer of the administrative action | C2 – Verifier I must check – Supervisor | C3 – Consulted Always keep me in the loop or I must recom- mend | C4 – Authorize / Approve I decide or approve | C5 – Informed Keep me in the picture | |
| 1 | Development of the Policy | HPR | HS Policy Project Team HOD | LGHS | MEC | HD Municipality NDHS | |
| 2 | Request from the municipality to assist in terms Beneficiaries that rightful owners, cohabiting , deceased, duplicate and missing or untraceable | Subsidy Admin | HD HOD | HD Municipality | MEC | HD Municipalities | |

| A LINE NO | B POLICY / PROCESS / PROCEDURE DESCRIPTION | C ADMINISTRATOR- ROLES AND RESPONSIBILITIES / DECISION POINTS (VARIC) | | | | | D CONDITIONS / LIMITATIONS / COMMENTS (SMARTER) |
|-----------------|--|--|---|---|--|---|---|
| | | C1 – Responsible and Execute Doer of the administrative action | C2 - Verifier I must check – Supervisor | C3 - Consulted Always keep me in the loop or I must recommend | C4 – Authorize / Approve I decide or approve | C5 - Informed Keep me in the picture | |
| 3 | Assessment of situations in terms Beneficiaries that rightful owners, cohabiting , deceased, duplicate and missing or untraceable | Joint responsibility between Municipality and PD (Subsidy and Admin) | HD HOD | HD Legal Services | MEC considers assessment | HD Municipalities | |
| 4 | Application to trace, transfer and confer rights to beneficiaries | Subsidy and Admin to prepare proposal | HD HOD | Beneficiaries Legal Services | MEC project and implementati on plan | Subsidy Admin HD Municipalities NDHS Beneficiaries | |
| 5 | Engagement with the affected Municipality | Subsidy and Admin | HD HOD | HD Municipality | MEC | HD Municipality Subsidy and Admin NDHS | |

Abbreviations:

| | |
|---------------|--|
| HD: | Chief Directorate: Housing Development |
| HOD: | Head of Department |
| HPR: | Housing Policy and Research |
| LGHS: | Department of Local Government and Human Settlements |
| MEC: | Member of the Executive Council |
| MM: | Municipal Manager |
| NDHS: | National Department of Human Settlements |
| NHBRC: | National Home Builders Registration Council |

How to Complete the Register of Administrative Action

1. The Register should identify the name of the department and the name of the policy.
2. Columns A to D of Appendix B is explained below:
 - (a) Column A – Line number for easy referencing of every line item.
 - (b) Column B – A description / summary of main elements of the policy, a broad process or broad procedure identified for the execution of an administrative action.
 - (c) Column C – Identifies the relevant administrator and describes their roles and responsibilities as well as necessary decision points or decision gates. For columns C1 to C5 please refer to the VARIC indicators set out in the Guide.
Capture the WHO (Administrator) and the WHAT (Action/ decision).
 - (d) Column D - Specify any conditions or limitations / thresholds that administrators must adhere to in exercising administrative action. This also provides for any comments that may be required to clarify actions.

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