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“There Shall be Houses, *Security* and Comfort¹”: A brief report into the delivery of title deeds in the Eastern Cape

Introduction

When one takes the time to peruse the Eastern Cape Department of Human Settlements (ECDoHS) reports, records, plans and media reports on the Department's work, one quickly learns that the Department is faced with a **“litany of prodigious challenges”²** that affect the delivery of quality housing to the people. From my observation the Department is faced with 3 key challenges regarding delivery of housing: **backlog in delivery of quality housing, exponential growth in rectifications** and a **massive backlog in issuing of title deeds to subsidy housing beneficiaries**.

There has been a lot of emphasis on the delivery of housing units, shoddy workmanship and rectifications of shoddily built structures but very little attention is being paid to the potentially more harmful long term effects of not transferring registered title to subsidy properties.³ Inasmuch as the ECDoHS has delivered a significantly high number of houses, research based on an assessment of National Deeds Register has revealed that a significant number of occupants of state subsidized houses have not received their title deeds⁴. The backlog effectively denies beneficiaries a critical point of entry into the formal property market

This brief explores the delivery of title deeds to beneficiaries of RDP housing within the province of the Eastern Cape by 2016 through an analysis of the national and more specifically the Eastern Cape human settlements policies and priorities. The brief concludes by providing recommendations in order to fast track the eradication of the title deeds backlog within the province and at national level.

The timely delivery of title deeds to beneficiaries of subsidy housing is a problem at national as well as provincial level. Research commissioned by the Urban Landmark (2011) estimates that between 1.1 and 1.4 million subsidy beneficiaries do not have title deeds to their properties.

Legislation and Policy Statements

Section 26 of the Constitution states that “everyone has the right to have adequate housing.” Section 26.2 goes on to state that “the State must take reasonable legislative and other measures, within its available resources to achieve the progressive realization of this right.” The United Nations Committee on Economic, Social and Cultural Rights further clarified the characteristics of the right to adequate housing to contain an entitlement to security of tenure. The committee clarified that the [security of tenure](#) is one of the conditions that must be met before particular forms of shelter can be considered to constitute “adequate housing”⁵.

Definition: A title deed is the legal document that reflects the ownership of a property.

Security of tenure: Housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats⁶.

Title deeds are important as they provide individuals with an address, protects title to a property and facilitates market and financial transactions, recognize the owner and their family as being part of the municipality and enable ownership of the property to pass on to family members in the event of death.

The consequences of delaying and/or failing to deliver title deeds to beneficiaries are complex and far reaching. Some of the most common consequences include but not limited to: cases where occupants may die, change their marital status or transfer their properties informally in the interim. The phenomenon of informal sales of RDP houses is widely known and publicized. Another major consequence presents itself after death of the beneficiary. The office of the Master of the High Court is sitting with unresolved estates due to subsidy housing beneficiaries who died before they received their title deeds. The legal processes to sort out these changes are costly and time-consuming.



Both legislation and policy confirms the need to ensure access to title:

The Housing Act 107 of 1997 is the key piece of legislation with regard to the titling of government subsidy (commonly known as RDP) houses. The Act makes provision for a

Housing Subsidy Scheme and is the post - apartheid state's most significant response to meeting the constitutional obligation to provide access to adequate housing to all South Africans (South African Constitution, Section 26).

The parameters of the Act emerged from the Housing Forum of the early 1990s and the Housing Subsidy Scheme (HSS) was seen as the mechanism by which low-income households could receive direct government assistance, in an attempt to redress ownership patterns and urban settlement morphologies created and entrenched by the apartheid system. The Housing Subsidy Scheme replaced all previous subsidies and was to be used to effectively provide housing, secure tenure and access to basic services in order to create a sense of empowerment and citizenship amongst population groups that had previously been excluded from land and property ownership.⁷

A key component of the HSS was that beneficiaries who received a house on an ownership basis would receive the title deed to the property. Accordingly, the title deed was seen as critical to ensuring not only security of tenure, but also that poor household could use their house as an asset to build wealth.

In 2014 the ANC's ⁸ election manifesto stated the following: "We will eliminate the backlog of title deeds. New home owners in the subsidy market will be issued with a title deed upon occupation"⁹.

The comprehensive plan for the development of sustainable human settlements, commonly known as Breaking New Ground¹⁰ (2009) also explicitly identifies the need to ensure residents of subsidized housing access to formal title, as a leading public policy priority. The Comprehensive Plan emphasizes 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"¹¹.

The principal legislation that governs the issuing of title deeds in South Africa is the Deeds Registries Act (No 47 of 1937). "The Act empowers only conveyancers to prepare deeds of transfer and in doing so, assumes responsibility for certain

facts set out in the deed and documents”¹². The function of the Department in this regard is to appoint conveyancers to carry out the registration process.

In the 2015 - 2016 Annual Performance Plan the Department introduced a project known as the [title deeds restoration project](#). The plan stated that Department will be working with the Estate Agency Affairs Board through the Title Deeds Restoration Projects to provide hands-on support to municipalities to ensure the transfer of housing to the rightful beneficiaries. However, the Department has not provided clear details regarding the logistics and the progress of the said project. The 2016-2017 Annual Performance Plan is also very vague on detail regarding the restoration project.

Extent of the Backlog

- ✚ **2016** the backlog in the issuing of title deeds in the Eastern Cape is [unofficially] estimated to be 60 000.
- ✚ **2009/10** Beneficiary occupancy audit finds that the extent to which title deeds have been delivered varies across provinces from 22 to 54%.
- ✚ **2011** research by Urban Landmark estimates that between 1.1 and 1.4 million subsidy beneficiaries do not have the title deeds to their properties.
- ✚ **2016** the national backlog in the delivery of title deeds is estimated to be 900 000 and R1.5 billion is needed to eradicate that backlog.¹³

Number of title deeds transferred to eligible beneficiaries by each metropolitan municipality in 2013/14 & 2014/15¹⁴

Performance indicators	Buffalo City Metro	Nelson Mandela Bay Metro	Mangaung Metro	Ekurhuleni	City of Joburg Metro	City of Tswane Metro	Ethekewini	City of Cape Town Metro	Totals
2013/14	0	0	2181	1486	0	4599	904	6151	15321
2014/15	2925	0	849	97	1758	3297	2212	1773	12911

Table 1: This table is taken from the National Assembly of South Africa. These are statistics that were given by the Minister of Human Settlements, Ms. Lindiwe Sisulu, to a question posed by the opposition party member of parliament about the delivery of title deeds by each metropolitan municipality. The blocks painted in red reflect the title deeds delivery statistics for the two Eastern Cape metropolitan municipalities for the 2013/14 and 2014/15 period. deeds in 2013 and 2014.

“Without a single title deed handed out by the municipality in 2013/14, it is no wonder that national government was forced to intervene on the eve of the election in this Metro to hastily hand out title deeds”¹⁵ – Inaugural speech by the Executive Mayor of Nelson Mandela Bay, Athol Trollip, 18 August 2016

The most common causes for delays in the process of transferring title deeds to housing subsidy beneficiaries can be categorized as follows:

1. Delays in the township establishment process and proclamation

The research commissioned by the Urban Landmark notes that in the early years of the subsidy programme

there had been immense pressure on government officials in many areas to build RDP houses at a scale. To do so they sometimes short-circuit the process of township proclamation to get houses on the ground, with the sense that they will “look after the paperwork later”. In this sense, deed registration is seen as “secondary in operational terms” by municipal managers¹⁶.

2. Failure to collect and/or hand over title deeds

Research has shown that there is a large number of title deeds that have been registered in the name of beneficiaries but not physically handed over to these individuals and are being retained by the municipality or conveyancer. Having worked in private practice for attorneys responsible for registering title deeds on behalf of a certain metropolitan municipality. The most significant challenges we had were: failure to pay when the transfer had been done and failure to collect the title deed once the payment had been processed.

Recommendation: The Department needs to dedicate some of its time and resources to consumer education about the value and importance of having a title deed. The Department also need to work on a timeous payment policy if title deeds are to be delivered to subsidy beneficiaries on time.

3. Appointment of conveyancers who do not have the capacity to deliver

There are cases whereby conveyancing attorneys who do not have the capacity to deliver deed of transfer registrations in bulk are given more than they can handle¹⁶. This adds to the delays in delivery. There is also the issue of delays in appointment of conveyancers

Recommendation: There should be quality control measures in place to avoid appointing conveyancing attorneys that do not have the resources to deliver bulk registrations timeously. The Department must also have set time frames regarding the appointment of conveyancers to carry out the transfer process.

4. There is no clear programme for handing over title deeds to beneficiaries of housing subsidies within the province

Despite the Minister and the MEC continuously lamenting slow delivery and making promises about aims to improve the delivery, it appears that there is still no well-coordinated policy aimed at fostering timeous transfer and delivery of title deeds to subsidy beneficiaries.

Recommendation: The Department should draft and adopt a clearly defined policy that seeks to ensure timeous transfer and delivery of title deeds to housing subsidy beneficiaries. Creation of a policy in this regard would respond to most of the causes of the delays and ensures that there is some uniformity in how municipalities deal with title deeds delivery



Image taken from the EC Human Settlements service delivery report 2011-2016. The MEC for Human Settlements, Helen Saul-August, handing over a title deed to Mr Bolani Pepese, 85 years old from Motherwell. This is proof of his home ownership to a home he has occupied without ownership since 1988

Title deeds delivery in the Eastern Cape

“We are also concerned about the serious backlog in the handing over of title deeds and the Department will liaise with the Department of Cooperative Governance and relevant stakeholders to facilitate streamlining of the title deeds administrative process” – MEC for Human Settlements Eastern Cape, 2014/15 Budget Vote

Number of Housing Units completed vs the number of Title Deeds issued in the Eastern Cape by District Municipality 2011 -2016



Graph 1: This graph reflects the glaring disjuncture between the delivery of subsidy houses and deeds of transfers to beneficiaries of subsidy housing within the Eastern Cape by each district municipality between 2011 and 2016. The figures contained in this graph were derived from the Eastern Cape Human Settlements service delivery report 2011-2016 which was launched by the MEC on the 24th May 2016.

Conclusion

The realization of security of tenure for subsidy housing beneficiaries is hampered by fundamental factors that are manifold and therefore require a multi-faceted response including implementation, institutional and policy – related measures in responding to the delivery of title deeds. The Housing Act assigns administration and implementation roles in terms of housing programmes to municipalities that are accredited in terms of this Act. The Eastern Cape Department of Human Settlements is then responsible for monitoring the performance of accredited municipalities. The framework for accrediting local authorities was finally

put in place in 2006 but to date only a handful of local authorities, the metros, have been granted a limited form of accreditation. It is recommended that the Department of Human Settlements investigates due diligence and accredits local municipalities so as to lessen the burden from the very few municipalities that are accredited. The Eastern Cape Department of Human Settlements should be commended for taking steps in order to eradicate the title deeds backlog in the province through the Title Deeds Restoration Project.

A provincial project title deed restoration project steering committee was established and its role was to work with municipalities to determine the extent of title deed backlog and attendant challenges as well provide strategic

interventions to address those challenges. However, a more coordinated and well planned response is required. Both the Annual Performance Plan and the Operation Plan 2016-17 of the Department do not give enough detail about the logistics of the project. For instance, the detail provided does not answer questions such as:

- ✚ How much is budgeted for eradication of the title deeds backlog?
- ✚ Time frames for eradication of both pre-1994 and post-1994 backlog?

- ✚ Time frames for timeous delivery of title deeds to beneficiaries upon occupation?
- ✚ How many conveyancing firms have been appointed to carry out the transfers?
- ✚ What strategic interventions have been taken to date?
- ✚ What is the progress so far?

Endnotes

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- ¹ This is one of the declarations from the Freedom Charter of 1955. The new [Constitution of the Republic of South Africa 1996](#) included many of the demands of the Freedom Charter.
- ² MEC for Human Settlements in the Eastern Cape, Helen Sauls-August, Human Settlements Service Delivery Report 2011-2016
- ³ Colin Marx and Margot Rubin, The Social and Economic impact of land titling in selected settlements in Ekurhuleni Metropolitan area, 2008 accessed from <http://www.birmingham.ac.uk/Documents/college-social-sciences/government-society/idd/research/social-economic-impacts/south-africa-case-study-report.pdf>
- ⁴ Province of the Eastern Cape Human Settlements, Annual Performance Plan 2016-2017
- ⁵ The United Nations Committee on Economic, Social and Cultural Rights accessed from : <http://ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
- ⁷ Colin Marx and Margot Rubin, The Social and Economic impact of land titling in selected settlements in Ekurhuleni Metropolitan area, 2008 accessed from <http://www.birmingham.ac.uk/Documents/college-social-sciences/government-society/idd/research/social-economic-impacts/south-africa-case-study-report.pdf>
- ⁸ ANC stands for African National Congress. It is the Republic of South Africa's governing social democratic political party. It has been the ruling party of post-apartheid South Africa on the national level since 1994.
- ⁹ 2014 ANC election manifesto, accessed from: <http://www.anc.org.za/docs/manifesto/2014/anc-manifesto.pdf>
- ¹⁰ Breaking New Ground (BNG) policy was introduced in 2004 to fast track housing delivery by introducing more effective and responsive housing programmes. This policy focused on the quality of housing products and the development of sustainable human settlements by introducing a variety of alternative and innovative housing programmes. The key objective of the policy was to eradicate informal settlements by 2014.
- ¹¹ Urban Landmark, Investigation into the delays in Issuing Title Deeds to Beneficiaries of Housing Projects funded by the capital subsidy. 2011
- ¹² Ibid.
- ¹³ Kwa-Gae [At Home], The official publication of the Department of Human Settlements. Jan – Mar 2016. Edition 5; Province of the Eastern Cape Human Settlements Annual Performance Plan 2015-2016, page 71.
- ¹⁴ National Assembly. Questions for written reply. Accesses on 11 November 2016 from: <http://www.dhs.gov.za/sites/default/files/parliamentary/314-NW323E%20No%20of%20title%20deeds%20handed%20over%20in%202013%20%26%202014.pdf>
- ¹⁵ Inaugural speech by the executive mayor of Nelson Mandela Bay, Athol Trollip 18 August 2016 accessed from : <http://www.nelsonmandelabay.gov.za/Documents.aspx?catID=42&pageID=208>
- ¹⁶ Title deed within the context of sustainable Human Settlements, 15 October 2013. Accessed from <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/131015title.pdf>; Lisa Steyn, Title deeds backlog trips up RDP housing, accessed from <http://mg.co.za/article/2016-04-14-title-deeds-backlog-trips-up-rdp-housing>

OUR ORGANIZATION

The South African Constitution commits government Departments to the progressive realisation of socio-economic rights within available resources. These rights include the right to education, healthcare, housing, a healthy environment and social welfare. In order to effectively realise these rights through the delivery of public services, state Departments and private service providers responsible for the management of public resources must implement effective accountability and service delivery systems. These include: planning and resource allocation systems; expenditure management systems; performance monitoring systems; integrity systems; and, oversight systems. The effectiveness of these systems can be established by monitoring their information outputs. To evaluate these systems, the PSAM produces the following reports annually; Budget Analysis, Strategic Plan Evaluation and Expenditure Tracking Reports alongside occasional service delivery reviews.

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