A strategy on how to address the restoration of title deeds to the rightful owners of pre- and post-1994 government-funded houses
Title Deeds Restoration Project
Inception Report

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26 September 2014

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pre- and post-1994 government-funded houses
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<tr>
<td>CSIR</td>
<td>Council for Scientific and Industrial Research</td>
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<tr>
<td>CSO</td>
<td>Civil society organisation</td>
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<tr>
<td>DBS</td>
<td>Discount Benefit Scheme, also known as the Enhanced Extended Discount Benefit Scheme</td>
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<td>DHS</td>
<td>Department of Human Settlements (national)</td>
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<td>EAAB</td>
<td>Estate Agency Affairs Board of South Africa</td>
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<td>HSDG</td>
<td>Human Settlements Development Grant</td>
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<td>IDP</td>
<td>Integrated Development Plan</td>
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<td>IRDP</td>
<td>Integrated Residential Development Programme</td>
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<td>NDP</td>
<td>National Development Plan</td>
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<td>NGO</td>
<td>Non-government organisation</td>
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DEFINITION OF KEY TERMS

General plan

General plan means a general plan approved by the Surveyor-General in terms of the Land Survey Act, 1997 (Act No. 8 of 1997).1

Land development

Land development means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme.2

Rightful owner

Person or people holding property by virtue of a legal or just claim3

Title Deed

Title deed means any deed registered in a Deeds Registry recording the ownership of land or a real right in land.4

A title deed is a legal document that reflects the ownership of a property. When a property is bought or sold and transfer takes place, the existing title deed is superseded by a new title deed which is executed in the Deeds Office through a signature by the conveyancer and the Registrar of Deeds.5

Township

Township means an area of land divided into erven, and may include public places and roads indicated as such on a general plan.6

Township establishment

Township establishment is a regulated process to bring vacant, serviced, identifiable, registerable sites onto the property market for transfer. The process involves preparation and approval of a layout plan, a detailed survey plan, and a general plan, and the opening of a township register which ultimately allows the registration of individual sites for freehold title.7

Township establishment [is the] legal process whereby an authority receives, considers and approves an application for a township and which culminates in the proclamation of the township.8

Township register

Township register means an approved subdivision register of a township in terms of the Deeds Registries Act.9

3 http://dictionary.reverso.net/english-definition/rightful%20owner
7 Based on Urban LandMark (2011). Investigation into the delays in issuing title deeds to beneficiaries of housing projects funded by the capital subsidy. Page 7.
8 CityScope Town Planners. Town planning terminology explained. http://cityscope.co.za/town-planning-terminology-explained
EXECUTIVE SUMMARY

In the last three years, several investigations have indicated that a growing number of beneficiaries of state-subsidised housing were not being issued with title deeds on occupation of their houses. Based on an assessment of the national Deeds Register in 2011, research indicated that over a million subsidy housing beneficiaries had probably not been issued with a title deed \(^9\). The Department of Human Settlements has been aware of this growing challenge, and has taken action to address the backlog. However a more coordinate response is required.

In July 2014, the Minister of Human Settlements raised the issue of title deeds as a national priority. She charged the Estate Agency Affairs Board with the responsibility of framing a strategy. This report outlines the proposal for a strategy to ensure the transfer of deeds in a realistic and systematic way.

For the remaining pre-1994 housing stock which was meant to be transferred into individual ownership under the Discount Benefit Scheme, the main challenge has been capacity limitations in provinces and municipalities to finalise the processes of transfer.

The major, if not the greatest, root cause of the non-issuing of title deeds since 1994 was the failure to finalise the establishment and proclamation of new townships where new housing was being built. The second most prominent cause for delay has been the administration of beneficiaries which has led to confusion in the final allocation process. Although these are the general causes, there is a great deal of variety in the specific challenges faced by each province and municipality, which are discussed in detail.

There has been reporting by provinces on the approximate scale of the challenge, but the exact numbers have not been confirmed. To reach a realistic figure, this strategy proposes that we initiate more rigorous and independent audits by provinces (covering all municipalities) of both pre- and post-1994 transfers outstanding. It would also be advisable to again cross check this with the numbers of owners registered in the National Deeds Registry in 2014.

The transfer of deeds to rightful owners who have not been issued with their papers is not only an end in itself. It is also a means to achieving a series of other ends. An effective system where all residents have access to their title deeds (and are aware of their usefulness):

- maximises the housing programme’s impact by creating assets and allowing people to build the value of their assets over time;
- potentially opens up more personal investment to residents thereby physically transforming housing into homes, and townships into neighbourhoods;
- distributes property ownership more equitably in the country thus achieving more balanced patterns of ownership;
- gives households their first entry into the property market, which can lead to improved housing conditions over generations as individuals and households trade up in the housing ladder;
- creates more active citizens, as envisaged in the National Development Plan; and
- improves the viability of municipalities by creating a property rates base in the long term.

This report outlines a strategy for a Title Deeds Restoration Project.

The overall vision is secure tenure and clear property rights for all residents of South Africa, and improved participation, especially of poor individuals and households, in the housing market as a means to poverty alleviation and wealth creation over generations.

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The **goal** of the Title Deeds Restoration Project is that all rightful occupiers of state housing receive their legal proof of property ownership (in the form of a title deed)\(^\text{11}\) in a timely and affordable manner, with the state playing a direct enabling role to ensure that this is achieved.

The **purpose** of the Project is threefold:

- that households are able to effectively use title deeds (and other legal proofs of ownership/occupation), once they have been transferred, as proof of tenure security, to relate to the municipality (e.g. when applying for service connections, changes in zoning and land use, and building permissions), to raise finance, and to buy and sell their property;
- that the state can maintain a cadastre and Deeds Registry which have integrity (i.e. are an accurate and up to date representation of land rights); and
- that municipalities can effectively manage land use, installation and maintenance of services and amenities, and maintain a rates base.

The **direct aim** of this strategy is to put in place a process which better identifies the causes and size of the blockages currently delaying the transfer of title deeds, and using this understanding to develop a practical set of actions which restore financial and administrative discipline into the housing delivery process. Longer term reforms of the system are also recommended.

The strategy as proposed by the EAAB, to ensure the transfer of title deeds, encompasses a number of proposed areas of attention:

1. Actions to ensure completion of transfer of **pre-1994 housing stock**;
2. Actions to unlock the current title deed backlog of **post-1994 housing stock**;
3. What to do differently in **current projects (in the pipeline) and new projects** coming on stream;
4. Recommendations on medium to longer term **policy and law reforms** to ensure future viability of the system;
5. Actions to **raise awareness of the importance** of title deeds and increase demand for property registration; and
6. **Overarching actions** to improve the way this project is communicated and how consultation can be enhanced.

The project actions span the next two and a half years, with project phases running to March 2017. The governing arrangement for the initiative are outlined in some detail. For the project to be a success, there is discussion of potential risks, and recommendations for mitigating those risks.

Critical success factors include ensuring that the required political will, human resources and budgets are committed to the project, and that there are clear roles and accountability for each of the project actors. In the public arena, the project should plan for focused consultations with the affected parties, and develop clear and realistic messages about what the project can deliver. An important success factor will be the degree of willingness on the part of municipalities, provinces and national government to increase their allocation of resources to solve the problem, and to be flexible, creative and responsible in implementing the project.

The key indicator of success will be that more people living in state-funded houses have their title deeds in their hands, and are able to use it effectively (along with the other benefits that come with formal housing) to alleviate poverty, create assets, and have a greater sense of dignity.

\(^{11}\) In the case of pre-1994 stock, the caveat to all receiving their title deeds, would be confined to those who opt for individual ownership.
INTRODUCTION: COMMITMENT BY THE MINISTER OF HUMAN SETTLEMENTS

On 15 July 2014, the honourable Minister of Human Settlements L N Sisulu promised in her budget vote speech to “prioritise the issuing of title deeds”.

The second highest priority commitment by the Minister for the 100 days after the speech was as follows:

Number two is the issue of title deeds. Firstly we will prioritise the issuing of title deeds for pre-1994 stock. This is important because these are otherwise dead assets. Without the title deeds the owners are unable to revitalise the old townships, which are in a very sad state of decay. The Estate Agency Affairs Board has been tasked to prioritise this and submit a report by 30 September 2014. Secondly, for the post-1994 stock, again we have dead assets lying in the Deeds Office. The Department will collaborate with the Department of Land Reform and the Office of the Land Commission and create a dedicated unit dealing with fast-tracking the issuing of title deeds of this post-1994 stock. Our people have a right to their title deeds and the fact that they do not have them is a sad indictment, because this is supposed to be an entry into the economy for the poor.12

For the Estate Agency Affairs Board (EAAB), the efficient issuing of title deeds to beneficiaries of state-subsidised housing is crucial for extending the operations of South African estate agents in support of the secondary housing market. Part of poverty alleviation and asset creation for poorer households is being able to use the house as an asset in the formal economy. If the EAAB is to provide transactional support at the lower end of the market, as many home owners as possible need to have access to a valid title deed. Without title deeds which people know how to use, residents will not be able to participate fully in the property market, the lower end of the property market will remain under-developed, and the footprint of the EAAB will remain unchanged.

In response to these commitments by the Minister and DHS, and the factors that EAAB needs to operate effectively across the entire residential market, this report outlines a proposal for a strategy to ensure the transfer of deeds in a realistic and systematic way.

BACKGROUND

When the state funds the production of housing and this results in the delivery of a house to a household, the household receives a range of benefits in the process. These include the benefits of access to services (such as clean water, better sanitation and access to energy supply), the health advantages of having an adequate house, the locational benefits of being in a formal settlement, and the social and economic benefits of owning a house and the land on which the house stands. For a number of reasons, not all houses produced up until 1994, and between 1994 and this year, have been fully transferred to the occupants. In other words, many residents are not in possession of the title deeds to their property. Most of the benefits of occupying state-funded houses have accrued to the residents, but for a significant proportion the benefits associated with legal home ownership have not been delivered.

Under the Discount Benefit Scheme tenants of pre-1994 state-funded housing stock, who were denied property ownership under the previous regime, were given the opportunity to own their houses13. However, approximately 68,400 (to be confirmed) of these transfers are still outstanding. From 1994 onwards, houses produced under the current democratic government’s housing programme were mostly transferred into the

name of new home owners, but especially since 2004 we have fallen behind, and a growing backlog has emerged.

Analysis of the national Deeds Registry in 2011\(^{14}\) showed that over a million subsidy housing beneficiaries had probably not been issued with a title deed\(^{15}\). As a participant and supporter of this early investigation, the Department of Human Settlements has been aware of this growing challenge.

The importance of participation in a functional housing market was highlighted in Breaking New Ground, and it suggested a series of interventions to improve market access.\(^{16}\) More recently, the National Development Plan has emphasized that exclusion from the property market is a disadvantage for poorer and lower-middle income households:

"The growth of property value has led to an overall average house price that has made housing unaffordable to many South Africans, and has further excluded participation in the property market by historically excluded groups. The growth has largely benefited middle- and higher-income groups."\(^{17}\)

As a result of all these factors, the Department has raised the importance of addressing the title deeds issue in a variety of forums, but because of the scale of the problem the Minister has decided that a more concerted effort is required to remedy the situation in its various dimensions.

**DIMENSIONS: THE SCALE AND NATURE OF THE CHALLENGE**

Before framing a strategy, it is necessary to describe the nature of the challenge in more detail. This is based on two phases of investigation: the first refers to information revealed in the 2011 investigation, and the second draws on current 2014 information provided by the provinces.

**THE SCALE**

The 2011 investigation revealed that by September 2010, 1.44 million government subsidised properties (including those transferred under the Discount Benefit Scheme (DBS)) were formally registered in the Deeds Registry. Given the number of houses delivered by government up until that time (2.94 million housing units and serviced sites, not including rental units), this implied that over a million subsidy beneficiaries had not been provided with the title deed to their property. Despite this, almost a quarter of all residential properties in the Deeds Registry were government subsidised houses delivered under the national housing subsidy programme.\(^{18}\)

To make clear the method used and the scope of the investigation, we quote from the full research report:

"This analysis used data provided by the Department of Human Settlements, Housing Subsidy Beneficiary Database. The data set provided comprised a list of individuals who had been approved

\(^{14}\) By FinMark Trust and Urban LandMark, in partnership with the Department of Human Settlements


for a subsidy for the purpose of owning a home, as well as in some cases their spouses. The database comprised only limited information (the Identity Number) of the individuals. The list was compared to the data in the Deeds Registry and a list of beneficiaries who have a registered property was identified. This comprised the Total Database and is the total number of approved beneficiaries who received a registered property through the National Subsidy Programme. This sample includes all subsidy types including project linked, individual, consolidation, etc., as well as the discount benefit scheme.19

THE PROVINCIAL PICTURE

Quoting from the Macro-Analysis Report from the same study, Figure 1 below shows total registrations by province from 1994 to 2009, as well as the percentage of registrations of reported total delivery for each province over the period. As indicated in the figure, the following was noted:

- The highest number of registrations occurred in Gauteng (395,765), the Eastern Cape (238,682) and the Western Cape (208,852). The lowest in Limpopo (34,710), Northern Cape (41,538) and Free State (43,319).
- While Gauteng had registered by far the most subsidy houses, it was not the most effective province in terms of the percentage of registrations against the reported number of houses completed or under constructed, having only registered 53%. In this regard the Free State had registered 78% of the subsidy houses it had reported delivered, the Eastern Cape (70%) and the Western Cape (61%). Limpopo had registered the least number of houses (13%).20

The metropolitan municipalities accounted for 49% of the total registered subsidy houses in South Africa. Ekurhuleni, Cape Town and the City of Johannesburg registered the highest number of subsidy houses.21

Figure 1. Total registrations vs number of houses reported by province, 1994 - 2009. Source: FinMark Trust, 2011

In provinces where much of the housing had been established on customary land, it is possible that the predominance of Permission to Occupy (PTO) tenure would explain some of the shortfall. We will return to this point.

THE CURRENT SITUATION

The very comprehensive set of investigations referred to above were concluded in 2011. As part of the process to formulate this strategy, provinces and municipalities were asked to report on the current situation, as far as they had access to the information. They were asked to report both on the scale of the backlog (i.e. the number of houses complete but beneficiaries not issued with title deeds) and the nature of the blockages. They were also asked to distinguish between houses built prior to 1994, which were to have been transferred under the DBS, and houses built from 1994 until now.

Only a few of the provinces had a clear picture of current deed backlogs, and most of those who did specified that these were estimates. The figures were not yet available from many of the municipalities. The following table reports on the numbers that were provided in August and September 2014.

<table>
<thead>
<tr>
<th>Province</th>
<th>Pre-94 stock</th>
<th>Post-94 stock</th>
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<tbody>
<tr>
<td>Eastern Cape</td>
<td>26,166</td>
<td>80,000</td>
</tr>
<tr>
<td>Free State</td>
<td>14,000</td>
<td>Audit to be undertaken</td>
</tr>
<tr>
<td>Gauteng</td>
<td>11,500</td>
<td>Unknown</td>
</tr>
<tr>
<td>Limpopo</td>
<td>450</td>
<td>12,072</td>
</tr>
<tr>
<td>KwaZulu Natal</td>
<td>16,200(^\text{22})</td>
<td>100,000</td>
</tr>
<tr>
<td>Mpumalanga</td>
<td>99</td>
<td>Audit under way</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>0</td>
<td>Unknown</td>
</tr>
<tr>
<td>North West</td>
<td>Unknown</td>
<td>Unknown</td>
</tr>
<tr>
<td>Western Cape</td>
<td>Unknown</td>
<td>86,000(^\text{23})</td>
</tr>
<tr>
<td>Totals for known provinces</td>
<td>68,415(^\text{24})</td>
<td>278,072</td>
</tr>
<tr>
<td></td>
<td><strong>346,487</strong></td>
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In a section below (page 20, Recent Indications of Nature of Delays), the detailed causes as reported by each province are discussed further.

THE TIMING

The emergence of a growing backlog in the transfer of title deeds had an important time dimension. Figure 2 tracks the timeline from 1995 until 2009. The light green line shows the number of registrations each year as a percentage of the number of houses completed and under construction. The darker green line shows this as a cumulative total, or the number of registered properties as a proportion of all houses delivered up until that year. The proportion steadily improves between 1994 and 1999, remains fairly consistently above 70% between 1999 and 2003, and then from 2004 begins to drop significantly.

\(^{22}\) Stock vested with province (5,100 units), eThekwini (10,200) and Msunduzi (900). For some of the council stock, sectional title arrangements are being considered, implying that not all outstanding stock would be transferred into individual title.

\(^{23}\) Based on August 2012 Arcus Gibb report. Numbers may have changed in the interim.

\(^{24}\) The figure of 63,605 is the estimate given in DHS (2013), Transfer of Pre-1994 Human Settlements Properties in South Africa. Annexure B Concept Note on Transfers (version 7).
Two external factors are noted on the graph. The first is in 2002 when the sales restriction came into effect, meaning that people could not sell their houses until an eight year period had elapsed. It was surmised that this may be significant because it could cause provinces or municipalities to withhold title deeds as an attempt to enforce this pre-emptive clause. The second factor, which seems to have been more significant, was the April 2004 revision to the housing subsidy progress payment system. The system "...was revised to allow for payment of the completed top structure before the registration of the transfer. This amendment responded to the reality that transfer processes were being delayed due to no fault of the developer. Therefore, in order not to undermine a developers’ access to payment, it was resolved that payment for the completion of a top structure could precede transfer, which often was much after occupation."  

After this amendment to the system, the proportion of registrations dipped alarmingly, with the cumulative total of registered properties dropping from over 75% to below 50% in one decade. From 2006 until 2009, less than a quarter of houses delivered were being registered. In terms of the timing there were other contributing factors, but the change in the payment system seems to have been the most significant and visible of the causes.

25 The sales restriction was made to protect the value of the housing asset by preventing speculation and downward raiding. It was introduced in terms of the Housing Amendment Act, Act 4 of 2001. Section 10A of the Act, inserted by section 7 of Act 4 of 2001, relates to restrictions on the voluntary sale of subsidised housing. Essentially it says that subsidy beneficiaries may not ‘sell or otherwise alienate’ their subsidised dwelling or site within a period of eight years from the date on which the property was acquired. " FinMark Trust 2011, Overall Analysis, Page 15.


Table 1. Average Annual Reported Housing Delivery and Number of Houses Registered, 1994-2009

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</thead>
<tbody>
<tr>
<td>Average annual number of subsidies approved</td>
<td>203,936</td>
<td>328,731</td>
<td>147,036</td>
</tr>
<tr>
<td>Average annual number of houses reported completed/under construction per year</td>
<td>142,539</td>
<td>179,765</td>
<td>234,037</td>
</tr>
<tr>
<td>Average annual number of subsidy houses registered</td>
<td>105,551</td>
<td>121,928</td>
<td>57,041</td>
</tr>
<tr>
<td>Average % of annual Subsidy Houses Registered to Houses Reported Completed/Under construction</td>
<td>74%</td>
<td>68%</td>
<td>24%</td>
</tr>
</tbody>
</table>

Source: FinMark Trust, 2011, Macro Analysis. Page 24

As a result, in many projects, the whole township establishment process was not seen through to completion. The process in each case was halted at different stages (as discussed further on page 16 below), but the ultimate outcome was that many recipients of RDP/BNG houses did not receive their title deeds at occupation, and many have still not received them.

**OVERVIEW OF THE SCALE**

This reporting of the scale of the challenge has arrived at estimates using two different methods. This is useful in triangulating the information. As explained, the 2011 investigation used the national deeds register as the main source of information, checked against the ID numbers of beneficiaries who has been allocated houses or sites. The second method relied on provinces to report what transfers they had effected, and what remained outstanding to date (2014). The first method indicated a number in the region of a million title deeds not issued to home owners by 2011. The second method indicated a number of around 346,487 title deeds still to be transferred in 2014, of which 68,415 were pre-1994 stock. The second number is much smaller because the reporting was mainly done by four out of nine provinces, and many municipalities within provinces still needed to provide information. Provinces also did not always have access to information about the number of title deeds transferred under other state department programmes (e.g. Public Works, COGTA and Rural Development and Land Reform).

The delivery of state housing since 1994 has now reached 3.8 million units. From this figure we need to deduct rental units, and rural houses on customary land (or where other tenure arrangements pertain) and where no title is expected. The remaining total can then be compared to the number of deeds issued to the rightful owners, so that we have an accurate estimate of the size of the current challenge.

To reach a realistic figure, this strategy proposes more rigorous and independent audits by provinces (covering all municipalities) of both pre- and post-1994 transfers outstanding. It would also be advisable to recalculate the national deed registry number for 2014.

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THE VALUE OF TITLE DEEDS

Why is this a problem, and why has the Minister made this a high priority issue to be addressed? Although it is directly acknowledged that private property ownership is only one form of secure tenure to which people need access, and that there is pressing demand for more rental housing (as another form of tenure) in many places across the country, the predominant form of delivery up until now has been of housing stock intended for individual ownership. With ownership comes certain rights and also responsibilities. The title deed is proof of transfer of those rights and responsibilities to the beneficiary (whether an individual, spouses or households).

The value of a title to a property can be summarised as follows. The title deed is the owner’s proof of ownership. It protects title to a property and facilitates market and financial transactions. Its key functions are that it:

- Protects rights
- Records changes
- Facilitates property transactions
- Facilitates financial transactions

Title deeds are also important as they:

- Provide individuals with an address;
- Recognise 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.

From a municipal perspective, ownership obliges the owner to pay property rates and service charges for services received thereby contributing to the municipality’s ongoing sustainability.

The responsibilities that come with formal ownership include paying the rates, where applicable, paying for services, maintaining the house and the plot, being considerate of neighbours, and ensuring that if the house is sold or if the owner dies, that the property is transferred to the next owner. On this last point, an additional responsibility is for the home owner/s to ensure they have a will which makes clear who the house goes to in the event of death.

The converse of this is that without formal ownership papers, it is difficult for the household to raise formal finance (using the property as collateral), to bequeath the property to family members in a will, to sell the house formally if they want to move, to legally run a business from the home, and indeed to participate fully in the formal economy. It also leads to disputes over property which can be costly to resolve both for the household and for the state.

At a more macro level, the lack of title deeds means that off-register transactions in the property market are not counted towards the national GDP, the Deeds Register becomes increasingly inaccurate, that more and more people are driven back into informal trading in residential properties (i.e. off-register transactions), that estate agents find it difficult to assist in supporting the growth of the township housing market, and that

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29 The Housing White Paper of 1994 commits the state to ensuring access on a progressive basis to “permanent residential structures with secure tenure”, along with “internal and external privacy and providing adequate protection against the elements, and clean water, adequate sanitary facilities and domestic energy supply”.

30 Based on Department of Human Settlements’ brochure, “Your home: Owner’s Handbook”.

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municipalities are unable to manage their rates base or levy service charges. Similarly, it makes it more difficult to implement building by-laws and ensure a level of health and safety in residential areas.

For institutions operating in the field, both public and private, the title deed backlog means they cannot operate as effectively in their respective fields of work as they might otherwise be able to. This affects, as mentioned, the EAAB, but also commercial banks, the National Housing Finance Corporation (NHFC), the Housing Development Agency (HDA), the National Home Builders Registration Council (NHBRC), and many other organisations operating in the residential property market arena.

It is also true that there is sometimes a lack of awareness of the importance of title deeds even when people have them in their possession. In the same way there is recognition that people need access to financial literacy, there is also a need for greater market and property literacy. Home ownership education is a key pillar of what the Department of Human Settlements has been doing, but it needs assistance in rolling out consumer education programmes.

All of these factors have a wider impact on the entire residential property market which is of concern to the Department of Human Settlements. Having invested a great deal in improving people’s housing conditions, the effect is that those same people are forced back, in many ways, into the informal sector. This undermines the potentially positive effects of property ownership on poverty alleviation and wealth creation, and acts as a barrier to full participation by active citizens in the formal economy. This is also referred to as the “dead capital” problem, in that the market value of properties cannot be used to unlock lending in the formal financing system.

To give an indication of the importance of participation in the formal economy, the 2011 investigation revealed that for the 1.44 million households who did have their title deeds, 89% of the original beneficiaries still remained in their houses (both pre- and post-1994 stock). Of that number, around 120,000 home owners had mortgaged their properties raising roughly R20 billion in mortgage finance. For the 11% of households who had formally sold their homes, those sales had generated R12 billion in new value.

Coming back to the people without title deeds, the longer it takes for the title deed to be transferred to the rightful owner, the more likely it is that the owner will not be easy to locate, and that because of informal property transactions, other occupants will already be rightfully occupying the property (via a legitimate sale) or illegally occupying the property (in the case of absent owners, or the non-allocation of houses). As mentioned, if disputes over property arise it is costly to resolve these unless there is a coordinated state-funded dispute resolution mechanism.

The issue of the non-transfer of deeds is therefore deeply significant for all concerned, and the Department is committed to addressing its urgent resolution. Some of the challenges that have emerged (e.g. how affordable it is to transfer a title deed) also point to a need for longer term reform of the system, a point we will return to.

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31 Dead capital refers to the market value of assets that cannot be realised because the assets cannot be used as collateral or traded in the formally regulated system, and therefore the asset value is depressed. This idea was popularised by Hernando de Soto in his 2003 book, "The Mystery of Capital: Why capitalism triumphs in the West but fails everywhere else".

THE NATURE OF THE CHALLENGE

Although there is a fair amount of overlap, the nature of the challenge for transferring pre-1994 stock is slightly different to the post-1994 stock.

PRE-1994 CHALLENGE

The challenges that are being experienced in the transfer of historical township stock are clearly outlined in a concept note by DHS. The report opened with this statement:

“Although much has been done by government through the Enhanced Extended Discount Benefit Scheme (EEDBS) and other related provincial policies, there is still a huge backlog in transferring pre-1994 housing stock and thus the handing over of title deeds to the citizens”

Quoting directly from the report, the main reasons for delay are given as:

1. Municipal capacity:
   a. In many instances the municipalities are not capable or equipped to assume ownership and administration responsibility for the relevant housing assets. Transferring the assets in such cases will require structured support to ensure that the transition is effectively undertaken. Some municipalities are not familiar with the EEDBS programme.

2. Municipal resistance:
   a. It was reported that certain municipalities refused to accept the transfer of the properties when they were approached. Many municipalities regard some of the assets as ‘liabilities’ and the requirement to administer the assets as an ‘unfunded mandate’ that is forced upon them.
   b. Provincial governments, as property owners, are currently paying rates and taxes to the municipalities in respect of the properties. Hence in many instances the transfer of the assets to municipalities will result in a loss of income for the municipality. This explains why there may be resistance from municipalities.
   c. In addition most of the provinces are not recovering the expenses incurred in respect of the administration of the stock from the occupants as they are supposed to, due to non-payment of accounts by the occupants (tenants or purchasers). This culture of non-payment is not effectively addressed by the provinces and this is raised as a concern by municipalities.

3. Provincial capacity:
   a. The amount of capacity involved in the administration of these properties varies from one province to the other. Some provinces have indicated that the transfer of the properties has been delayed due to lack of the necessary skills.
   b. Some 355 provincial officials are currently assigned to administer provincial properties (93% of these were in KZN, Western Cape and Gauteng). Concerns were raised in the past regarding a possibility of retrenchments should the properties be transferred.

4. Financial implications for provinces:
   a. The administration of the housing assets by provinces has substantial financial implications. The provinces of Gauteng and KwaZulu-Natal annually prioritize funding for the administration of the assets from the Human Settlements Development Grant allocation. Western Cape funds the costs from their ‘equitable share’.

b. Between 2008 and 2013, the deficit between the expense of administering the assets, and the income received for three selected provinces (namely Gauteng, KwaZulu-Natal and Western Cape) was R322.6 billion. i.e. the total expenses of administration were R393.9 billion of which only R71.3 billion was recovered from the HSDG and the equitable share.

5. Province-specific challenges:

In addition to the above challenges, provinces indicated the following specific challenges:

a. Eastern Cape: Rectification of pre-1994 houses (mud-houses)
b. Free State: Missing records
c. Gauteng: Lifting of caveat, and delay in processing estate cases due to family disputes
d. KwaZulu-Natal: Backlog experienced by State Attorney
e. Limpopo: Transfer of properties from Public Works to COGHSTA
f. Mpumalanga: Rural land not being formalized
g. Western Cape: Delay in obtaining Item 28 (1) certificates, and incomplete township establishment processes

These are significant challenges and for the transfers to be effected, the root causes will need to be addressed. After a decision by MinMec in September 2013 to accelerate the transfer of pre-1994 properties34, a number of Directives were issued35 but from current discussions it is difficult to track what progress has been made36.

**POST-1994 CHALLENGE**

The major, if not the greatest, root cause of the non-issuing of title deeds since 1994 was the failure to finalise the establishment and proclamation of new areas being developed. These delays in township proclamation were largely because the project developers had not followed through on the approval of a General Plan for the new area. This then delayed the opening of a township register. The primary stumbling blocks were that underlying disputes over land rights needed to be resolved first, and provincial and municipal departments and the Deeds Registry Offices often did not (and still do not) have the necessary expertise or capacity to do that. There is also immense pressure on government to build subsidy houses at scale.

Because the technical terms associated with the township establishment process are referred to when describing where the process has been delayed in specific cases, it is useful to briefly outline the steps in a typical township establishment process.

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34 DHS Memorandum 4/8/1 (no date), Chief Director: Human Settlement Planning, “to provide a report with regard to work performed by this office in terms of the issuing of title deeds”.
36 For further discussion of the Directives, see page 23.
Figure 3. Typical township establishment process. Source: Urban LandMark, 2011

The second most prominent cause for delay has been the administration of beneficiaries and the allocation process.

To summarise, the key factors causing delays in the transfer of title to subsidy beneficiaries are as follows:

1. **Delays in the opening of township registers:**
   a. Delays in Proclamation. These occur where the various requirements to get an approval of a general plan, such as surveying, have not been met. In addition the need for comprehensive environmental assessments results in delays.
   b. Delays in Opening a Township Register. The primary delay in this respect is the resolution of the underlying land rights. This requires not only proclamation (i.e. approval of the general plan) to be in place, but also the resolution of all restrictions and servitudes. The process can be hampered by missing information, deceased rights holders, and general inaccuracies in recorded data.
   c. In addition, there is often illegal occupation of the demarcated sites in the township, and what is referred to as a “mix-up” in sites occupied by approved beneficiaries.

2. **Delays in transferring to individual owners**, which applies differently to first and second generation property owners:
   a. In the case of first generation owners (i.e. the primary registration) the property is required to be valued and a municipal account opened. The primary registration is the first

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Registration of an erf to an individual in the Deeds Registry and is likely to be the one that is most applicable to beneficiaries of subsidy housing. There appears to be failure or significant delays by municipalities in valuing township properties and in opening municipal accounts.

b. With respect to the second generation the key delay factor is municipal arrears which prevent the issuing of clearance certificates. Without a clearance certificate transfer cannot occur.

3. **Collection of documents**: many beneficiaries had still not collected their title deeds after they had been processed (and after having resided in the premises several years). This could be as a result of a lack of understanding of the importance of a title deed. To their credit some municipalities have made significant efforts to encourage RDP beneficiaries to collect their deeds.

4. **Provincial governments not closing out projects**: The BNG Review report (2009) notes that many provincial government-managed projects were not being closed out properly. In many projects conveyancers dealing with such projects were found to have either submitted incorrect information for the registering of properties or not to have submitted documentation at all.

5. **Inefficiencies in the Deeds Registry**: The Department of Human Settlements indicates that there are numerous administrative and other issues at the Deeds Registry Offices. One such issue is a frequent delay by the Deeds Office in the delivery to the project management team (or municipal / provincial office) of the deed documents once they have been registered. Documents lodged at the Deeds Registry are often returned to the conveyancer due to supposed mistakes or omissions. In many cases the Department reports that such mistakes are not substantial and should in no way invalidate the document. Such failed registrations are often not re-lodged by the conveyancer, possibly due to resource and capacity restraints. The Department indicates that there have been cases in which documents were rejected up to four times.

6. **Conveyancer holding back documents**: Registered title deeds are sometimes held back by the conveyancer due to non-payment of fees by the project owner, which is usually the province or municipality (or a contractor appointed by such). Also, while the conveyancer is usually guaranteed that the municipality will pay for the opening of township registers, the municipality will not usually guarantee that it will pay the costs for registration of transfers. This work would then be done at risk by the conveyancer who may be reluctant to proceed on that basis.

7. **Poor performance by state attorneys**: The Department of Human Settlements argues that the practice of provinces using state attorneys is proving too slow and contributes to the blockages.

8. **Inefficiencies within municipalities**: The Department of Human Settlements notes that a range of administrative problems and poor practices on the part of the municipality also contributes to the blockages. There are sometimes flaws in the site allocation lists provided by the municipality (which advises on which erf the beneficiary is to be registered). There are many cases of beneficiaries being allocated more than one stand while a single stand is sometimes allocated to two different beneficiaries. There are also cases in which stands have been allocated to people who were found not to qualify for housing subsidies and had their applications rejected.

9. **Inefficiencies by Project Managers**: The Department of Human Settlements argues that project managers themselves can sometimes contribute to delays by not forwarding invoices to the Department upon completion of work and/or not making payment to the consultant upon receipt of funds from the department.

10. **Inefficiencies within national Government**: The Department of Human Settlements acknowledges that there are flaws in its own beneficiary administration process noting the need for new measures to ensure the accuracy and completeness of the beneficiary information captured in order to improve the integrity of the title deeds registration process. The Department also identifies the need to
The problem of title not being transferred at the time of sale or allocation to an individual is not easy to resolve, in that it is not just a matter of redressing the issue. In order to transfer title to the owner of the property, it is necessary to ensure that the individual to whom the property was awarded is still the same individual that resides in the house. Accordingly, it is necessary to determine if the original owner did not sell the property informally, or died, or simply moved on.

During the implementation of the strategy to resolve these issues, there needs to be more accurate information, on a project by project basis, on where each process is currently delayed, a practical proposal of how to resume the process, and ultimately a strategy on how to locate rightful owners and issue the title deed to them. In planning for such a strategy, the time and costs associated with each phase of the process need to be estimated, and then the necessary expertise and funds brought to bear to resolve the situations.

In 2009 the Department published and disseminated a “Housing Project Process Guide”. The Guide contains very clear process flow charts, project schedules, and checklists for land assembly, township establishment, subsidy approval and the like. The Guide applies to three programmes, namely the Integrated Residential Development Programme, the Upgrading of Informal Settlements Programme, and the Rural Housing Subsidy: Communal Land Rights. In this sense, a best practice for ensuring that many of these blockages do not arise has been in place for the last five years, and it would seem that housing developers should have had access to the necessary information and tools to ensure the delivery of title deeds. However, even with the best intent there remain challenges within the current system. This strategy raises the need for more fundamental changes to programmes, payments and policies (refer page 27).

**RECENT INDICATIONS OF NATURE OF DELAYS**

In recent discussions with provinces (first referred to above on page 11, The Current Situation), a series of issues were raised around the nature of delays, challenges in current policy and legislation, limitations of institutional capacity, and actions being taken by provinces to address the challenges. The points listed by the provinces in the table below are similar to those just listed above, but it is useful to see which provinces highlight which issues as their key challenges.

The issues raised can be summarised as follows, depending on whether they apply mainly to the pre- or the post-1994 stock. The provinces which raised these issue appear in brackets after each point

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39 Many of these points were derived directly from Department of Human Settlements: Briefing and presentation to the Portfolio Committee on Human Settlement on the issue of issuing title deeds: 26 May, 2010


Table 2. Summary of issues reported by provinces (2014)

<table>
<thead>
<tr>
<th>Period</th>
<th>Nature and cause of delays</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-1994 stock (to be transferred under the EEDBS)</td>
<td>Most properties still to be transferred are held by municipalities (L)</td>
</tr>
<tr>
<td></td>
<td>Resistance by municipalities to take transfer of properties from provinces (EC)</td>
</tr>
<tr>
<td></td>
<td>Arrears on rates and services delays transfers (KZN)</td>
</tr>
<tr>
<td></td>
<td>Issuing of rates and water clearance certificates delays transfers (KZN)</td>
</tr>
<tr>
<td></td>
<td>Delays with the State Attorney (KZN)</td>
</tr>
<tr>
<td></td>
<td>Vacant land appearing on Debtors’ System: likely to be devolved to relevant municipalities (G)</td>
</tr>
<tr>
<td>Post-1994 stock</td>
<td>QUANTIFICATION CHALLENGES</td>
</tr>
<tr>
<td></td>
<td>The post-1994 backlog situation unclear because an audit has not been done at Provincial level; but an audit is prohibitively expensive (FS)</td>
</tr>
<tr>
<td></td>
<td>Some apparent non-transfer of deeds is because housing has been built on Communal Land under Permission to Occupy arrangements (FS, proportions to be established)(90% PTOs in Limpopo)(KZN, proportion unknown)(approx 70% in MP)</td>
</tr>
<tr>
<td></td>
<td>Hard to account for deeds registered in parallel processes under the tenure upgrading programme (Land Administration Unit, linked to the former Department of Agriculture, Rural Development and Land Administration, now in COGTA)(MP)</td>
</tr>
<tr>
<td></td>
<td>Cost of doing deeds searches is reported to be exorbitant (FS)</td>
</tr>
<tr>
<td></td>
<td>Non-cooperation of municipal officials with information requests from province (EC)</td>
</tr>
<tr>
<td>TOWNSHIP REGISTRATION</td>
<td>TOWNSHIP REGISTRATION</td>
</tr>
<tr>
<td></td>
<td>Transfer of land between state departments has not taken place, especially provinces to municipalities (MP)(KZN).</td>
</tr>
<tr>
<td></td>
<td>Houses located on land belonging to Public Works: land not transferred to province or municipality (3,962 beneficiaries) (EC)</td>
</tr>
<tr>
<td></td>
<td>Lengthy transfer processes, township establishment not completed in time, or delayed at some point, or not even initiated in the first place (L)(MP)</td>
</tr>
<tr>
<td></td>
<td>Township establishment delays - General Plan not cancelled (KZN)(WC)</td>
</tr>
</tbody>
</table>

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42 Subsidy funds itemised for conveyancing (R1000) is used to build larger house on Communal Land (L)
<table>
<thead>
<tr>
<th>Period</th>
<th>Nature and cause of delays</th>
</tr>
</thead>
</table>
| TRANSFER OF OWNERSHIP: CONVEYANCING<sup>43</sup> | Registration of title deeds takes a long time (EC)  
Pre-emptive clause emphasized by Limpopo province making sure that title deeds are endorsed accordingly (L)<sup>44</sup>  
Conveyancers not appointed (FS)(NC – conveyancers are not being appointed by municipalities – NC Province to intervene)  
Lack of capacity in municipalities, especially to conclude transfers (EC). No dedicated capacity in provinces to deal with beneficiary administration, planning, conveyancing and final transfer (FS, G, KZN)  
Western Cape:  
"It was shown that the majority of constraints pertained to a multitude of beneficiary and subsidy administrative issues (43%) and conveyancing (30%) constraints. The other constraint types collectively accounted for only 28%, as follows: land ownership (8%), town planning (6%) [and] land surveying (14%). Generally the findings within the individual municipalities were found to be relatively consistent with the provincial wide situation." (Arcus Gibb report)  
Illegal occupation of houses (L) or illegal land lords (KZN)  
Duplication of title deeds or incorrect details on deeds (KZN)  
Municipalities (and Ward Councillors) not finalising beneficiary lists (EC) |
| TRANSFER OF OWNERSHIP: FINAL ALLOCATION TO BENEFICIARIES | Some municipalities hanging on to deeds without knowledge of beneficiaries (EC)  
No beneficiary confirmation, and complications in the allocation of houses (WC main cause)  
Disputes between occupants and title holder delaying allocation of deeds (KZN, EC)  
Beneficiaries deceased (also known as deceased estates) - (a small number of cases in Limpopo)(KZN)  
Refusal of some beneficiaries to apply for a title deed if no house has been delivered or if house is poor quality and still to be repaired under the rectification programme (EC)  

<sup>43</sup>The constraints relating to final transfer are also summarised well in Department of Human Settlements (2014), Draft Guidelines for Township Establishment Processes and the Registration of Transfer of Residential Properties, pages 18ff. The categories of constraint include: beneficiary not traceable, unsigned agreements between beneficiary and authority, un-finalised township establishment process, general plan not approved, pegging incomplete, land ownership issues not resolved, non-transfer of land from developer to municipality, and missing conveyancing documents.  
<sup>44</sup>It is not clear whether the endorsement of title deeds causes any or some delay.
The reporting by provinces is based on a certain level of fact-finding, although not in most cases on focused, independent investigations. Because of the lack of solid information in most provinces, the delays in the process cannot be plainly quantified (i.e. how many beneficiaries are affected, how long the situation has lasted, and when it is likely to be resolved). Most provinces do not have 'live' monitoring systems which would track progress in the allocation of deeds, and so where focused investigations have been done these are soon out of date.

However many provinces do have action plans to resolve the issues which are clear (e.g. needing to appoint conveyancers). In other cases the challenges are more difficult to resolve within a predicable time frame, for example the resolution of disputes or the refusal to apply for a title deed.

In 2012, the Western Cape commissioned the most detailed investigation of the size and type of constraints in the transfer of ownership. This needs to be brought up to date, but could be used as a template for other provinces to conduct similar investigations. Mpumalanga provided very detailed information which allowed more accurate estimates of backlogs to be made, and to identify in which neighbourhoods the blockages were located.

It is clear that there is a long chain of events (in most cases over many years) which ultimately leads to the allocation of a title deed to a home owner (see Appendix on Appendix: Mapping the Stages in the Deeds Process, page38). Apart from being long, the process is also technically complex (involving many professions) and costly. However, we have argued that home ownership is a key pillar of the government's poverty alleviation programme and that the challenges described need to be carefully and boldly addressed with the mobilisation of the necessary resources (financial and human).

This concludes the situational analysis. The scale, nature, and possible causes of the challenge have been outlined. The following sections propose a strategy to address the restoration of title deeds to rightful owners.

**OUTLINE OF A RESTORATION STRATEGY**

The strategy to address the transfer of title deeds to the rightful owners of state-funded houses addresses the current challenges, and ensuring that the effectiveness of the system improves in the future.

As has been discussed, the transfer of deeds is not only an end in itself, but is also a means to achieving a series of other ends. An effective system where all residents have access to their title deeds:

- maximises the housing programme's impact by creating assets and allowing people to build the value of their assets over time;
- potentially opens up more personal investment by residents thereby physically transforming housing into homes, and townships into neighbourhoods;
- distributes property ownership more equitably in the country thus achieving more balanced patterns of ownership;
- gives households their first entry into the property market, which can lead to improved housing conditions over generations as individuals and households trade up in the housing ladder;
- creates more active citizens, as envisaged in the National Development Plan; and
- improves the viability of municipalities by creating a property rates base in the long term.
VISION, GOAL, PURPOSE AND AIM

The overall **vision** is secure tenure and clear property rights for all residents of South Africa, and improved participation, especially of poor individuals and households, in the housing market as a means to poverty alleviation and wealth creation over generations.

The **goal** of the Title Deeds Restoration Project is that all rightful occupiers of state housing receive their legal proof of property ownership (in the form of a title deed) in a timely and affordable manner, with the state playing a direct enabling role to ensure that this is achieved.

The **purpose** of the Project is threefold:

- that households are able to effectively use title deeds (and other legal proofs of ownership/occupation), once they have been transferred, as proof of tenure security, to relate to the municipality (e.g. when applying for service connections, changes in zoning and land use, and building permissions), to raise finance, and to buy and sell their property;
- that the state can maintain a cadastre and Deeds Registry which have integrity (i.e. are an accurate and up to date representation of land rights); and
- that municipalities can effectively manage land use, installation and maintenance of services and amenities, and maintain a rates base.

The direct **aim** of this strategy is to put in place a process which better identifies the causes and size of the blockages currently delaying the transfer of title deeds, and using this understanding to develop a practical set of actions which restore financial and administrative discipline into the housing delivery process. Longer term reforms of the system are also recommended.

The strategy as proposed by the EAAB, to ensure the transfer of title deeds, encompasses four dimensions.

1. Actions to ensure completion of transfer of **pre-1994 housing stock**;
2. Actions to unlock the current title deed backlog of **post-1994 housing stock**;
3. What to do differently in **current projects (in the pipeline) and new projects** coming on stream; and
4. Recommendations on medium to longer term **policy and law reforms** to ensure future viability of the system.

These dimensions are illustrated in Figure 4.

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45 In the case of pre-1994 stock, the caveat to all receiving their title deeds, would be confined to those who opt for individual ownership. In some cases people may opt to continue to rent state housing, and municipal rental stock practices differ in this respect, or may refuse transfer until completion of some aspect of the project (which also may apply in some post-1994 cases).

46 That is, housing projects completed, people having taken occupation of houses, but some or all beneficiaries in those projects not having been issued with title deeds.
Taking each of these dimensions in turn, the following sections describe in brief the sequence of actions to be taken.

1. **PRE-1994 STOCK**

The strategy relating to pre-1994 stock revolves around the completion of the Discount Benefit Scheme process (refer page 16, Pre-1994 Challenge). As explained in the Department’s draft policy guide on township establishment and transfer of properties:

“Properties delivered during the pre-1994 period through government housing assistance programmes and which were allocated to beneficiaries before 15 March 1994, can be transferred to their original beneficiaries in terms of the provisions of the Enhanced Extended Discount Benefit Scheme (EEDBS).

The properties affected by the EEDBS comprise rental houses and flats, properties sold on deed of sale transactions where a balance of the purchase price plus interest is still to be repaid and individual loans issued in respect of approved beneficiaries where a balance of the loan must still be repaid.”

The approximately 68,400 properties (to be confirmed) that fall into this category are likely to be challenging to finalise. The DBS and EEDBS have been in operation for many years, and the properties remaining un-transferred are likely to be the ones that are more difficult to finalise for a range of reasons. These reasons need to be further established, as suggested in the actions to be taken.

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48 Not all provinces have reported, and most who reported are using broad estimations based on their Debtors’ Book. Many municipalities still need to report.
Recommended strategic actions for pre-1994 stock:

1) establish **updated information** on the nature and extent of the backlog in each province, municipality and neighbourhood:
   a) confirm backlog in each category, for example:
      i) deceased estates and title adjustments
      ii) number of informal sales
      iii) incomplete planning or regulatory processes
   b) confirm reasons for delays in final transfer to beneficiaries, e.g. customary unions, disputed ownership, and mismatch between registered owners and current occupants (e.g. because of informal sales), etc.
   c) quantify and confirm challenges to transfer, for example:
      i) municipal and provincial capacity to finalise transfer
      ii) capacity of State Attorney’s Office
      iii) resistance from municipalities to take transfer
      iv) outstanding rectification processes of pre-1994 stock
      v) missing records, etc.

2) develop **implementation plans** to address these blockages:
   a) each province to develop a detailed plan, including timeframes, costs and targets for the next three financial years
   b) propose a structure and reporting framework for dedicated provincial and metro Implementation Teams
   c) propose a dispute resolution mechanism (at provincial and/or municipal level)
   d) review and align these proposals at national level, and amend plans

3) **costing** of implementation plan:
   a) cost the actions needed to effect transfer of outstanding properties, including funds, human resources (including extra capacity needed) and time estimates
   b) confirm the level and availability of funds committed by each province to ensure the completion of transfer via the EEDBS, and funds available from the Human Settlements Development Grant (HSDG) in the 2015/16 and 2016/17 Provincial Business Plans

4) propose a **cut-off date for the transfer of pre-1994 stock** in light of Section 15 of the Housing Act of 1997 as amended, and request Ministerial endorsement

5) put **Provincial and Metropolitan Implementation Teams** in place, reporting to the EAAB and the Steering Committee

6) **monitor delivery** on targets on a quarterly basis

A comprehensive delivery of the situation was done by DHS in 2013, and recommended actions were framed at that stage. These involved directives to provinces to prioritise and develop plans for the transfer of pre-1994 properties\(^{49}\). These strategies and plans should be the basis for current action.

\(^{49}\) DHS Memorandum 4/8/1 (no date). Chief Director: Human Settlement Planning, “to provide a report with regard to work performed by this office in terms of the issuing of title deeds”. And, DHS (2013). Transfer of pre-1994 Human Settlements Properties in South Africa. Annexure B Concept Note on Transfers (version 7). DHS Directives at that stage included:

a) A Directive to all Provinces to prioritize the transfer of properties especially the pre 1994 [stock];

b) A Directive to all provinces to develop detailed plans for the short term, the remainder of the current political term (March 2014) and detailed plans for the medium term (up to end of 2016/17).

c) A Directive to all Provinces and assigned Municipalities to set up special transfer units to deal with transfer of title deeds pre and post 1994 properties. The units should be fully capacitated and structures be standardized. Clear targets should be set for the officials assigned to perform the task and this may be linked to their performance bonuses.
2. POST-1994 STOCK

The strategy relating to post-1994 stock involves developing a coordinated response to unblocking projects and final transfer processes relating to RDP/BNG houses intended for ownership under the Government’s Housing Subsidy Scheme. As alluded to in the Department’s draft policy guide on township establishment and transfer of properties, it is appreciated that in some cases there will be high level causes that are delaying the transfer processes (i.e. not easily solved at a local level), nevertheless each individual development will have to be assessed to establish what actions are required to finalise the transfer transactions.

Recommended strategic actions for post-1994 stock, would happen in three phases:

1) **Scoping Phase:**
   a) establish **updated information** on the nature and extent of the delays in each province, municipality and neighbourhood, commissioned by the EAAB
   b) establish exact numbers of properties where there are **rights to land under customary (indigenous) law** (e.g. Permission to Occupy arrangements, and any other arrangements that mean it is unlikely there will be transfer of a title deed to the occupier or registration in the Deeds Register). Establish which of this number still requires action to upgrade to freehold tenure in terms of the Upgrading of Land Tenure Rights Act No 112 of 1991 and other legislation such as the Interim Protection of Informal Land Rights Act No 31 of 1996
   c) **confirm number of properties delayed** in each category (and in each province and municipality), and the reasons for each, for example:
      i) deceased estates and title adjustments
      ii) informal sales
      iii) illegal occupants
      iv) incomplete planning and regulatory processes
   d) collaborate with the Department of Rural Development Land Reform and create a dedicated **national Steering Committee** dealing with fast-tracking the issuing of title deeds for post-1994 stock
   e) develop **provincial implementation plans** to address delays:
      i) each province to develop a detailed plan, including strategies to unblock transfer processes (for each category), timeframes, targets for the next three financial years,
      ii) establish anticipated costs, including funds and human resources (including extra capacity needed)
      iii) confirm the level and availability of funds committed by each province
      iv) propose a structure and reporting framework for the dedicated Implementation Teams
      v) propose a dispute resolution mechanism (at provincial and/or municipal level)
      vi) propose test projects per province, including projects which address delays at a number of typical blockage points from the non-establishment of townships, to the final transfer of deeds already issued
      vii) review and align these proposals at national level, and amend provincial plans accordingly

2) **Testing Phase:**
   a) confirm choice of test projects for each province, including timeframes, number of beneficiaries to receive deeds, etc.
   b) confirm availability of budget to implement

   d) A Directive to National Department to prepare a national backlog eradication plan that is supported by information emanating from the detailed business plans which are articulating targets in relation to transfer of properties.

51 For the typical project phases refer to Appendix: Mapping the Stages in the Deeds Process
c) design monitoring and evaluation mechanism for test projects
d) design communications strategy at provincial (consistent with national communications strategy – see below)
e) undertake projects in each province to test approach across a spectrum of case types
f) report on delivery, and lessons learnt (national workshop for sharing information)

3) Full roll-out Phase:
   a) redesign provincial strategies and programmes in light of learning from testing phase
   b) secure budgets, and reflect in Business Plans
c) re-appoint Implementation Teams, confirm administrative and technical support
d) implement strategies at provincial and municipal level
e) monitor and evaluate delivery
f) communicate programme successes and learning

At a national level, this part of the strategy is likely to be the most costly because of the numbers of properties involved, the types of (legal and other) expertise needed, and the need to put in place dispute resolution mechanisms at the settlement and/ or municipality level.

3. AMENDING THE APPROACH IN CURRENT AND NEW PROJECTS

The Department has developed a guide for township establishment processes and the registration of transfer of residential properties. This contains many of the programme adjustments that are needed to ensure that future projects and projects currently under way do not lead to the further exacerbation of the title deeds backlog. These are the shorter term amendments to the housing policy and programmes, and in the next section we discuss the longer term legal and other policy and programme reforms that are required.

Provinces and municipalities should, as a matter of urgency, take action to adjust their approaches in current projects. Indeed, it is a requirement in the National Development Plan and in Outcome 8 targets that no houses are delivered to beneficiaries without the simultaneous transfer of title deeds. The recommendation by the National Development Plan, in its section on “sharpening the instruments” of delivery, is to:

“Ensure that all state-funded houses transferred to beneficiaries have clear property rights attached, whether a title deed delivered to the beneficiary household, or a clear rental agreement. Assist households in resolving other legal issues constraining their property rights such as the transfer of estates, property disputes and delays in title deed transfer.”

The recommended strategic actions for current and new projects are as follows:

1) Re-assess current national, provincial and municipal housing programmes and project arrangements to identify remaining causal factors for delays in township establishment and non-transfer of deeds (i.e. addressing the whole project pipeline)
2) Propose and implement programme amendments to remove obstacles and improve the efficiency of the systems, including identifying budgets required to address capacity constraints
3) Strengthen planning, monitoring and reporting on housing delivery, to ensure that the multiple processes that are needed for final transfer to take place remain on track throughout the project duration
   a) budgets and capacity to achieve this must be included in provincial business plans
   b) monitoring information should be explicitly reflected in all provincial reporting, and progress recorded in the Housing Subsidy System and in all reporting by DHS

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4) Identify and take actions to improve streamlining of township establishment processes via the Surveyor General's Office, and taking into account the new approval processes defined by the Spatial Planning and Land Use Management Act\(^53\)

5) Identify and take actions to improve the efficiency of the registration of deeds in the Deeds Registry

Although it affects local delivery of projects, this dimension of the strategy will need leadership and strong coordination from the national level. As mentioned, the draft guide has already been developed by the national Department.

### 4. POLICY AND LAW REFORM

Apart from the complexity of the township establishment process, the appropriateness of the current deeds registration system has been questioned. The investigations which form part of this strategy and the test projects, as outlined above, should lead to clear recommendations of longer term, more fundamental reforms to the system. The aim would be to develop amended procedures which resulted in shorter time spans, which are more realistic from a state capacity perspective, and which are ultimately more affordable to prospective and current home owners.

For example, the report on delays to title deed transfers, based on interviews with land professionals, raised the following issues:

- while the residential property conveyancing system in South Africa is thorough and legally sound, it is far too complex for small transactions
- most municipal contact with the Deeds Office occurs via a conveyancing attorney. Some interviewees questioned the necessity to have an attorney undertake the conveyancing for subsidy properties, a process that, while mandated in law, brings considerable costs and complexity
- some proposed investigating the systems in countries where other forms of proof of ownership have been implemented, such as licencing units for a time until the title deed is ready to be issued.\(^54\)

Another area for reform relates to the eight year sales restriction that applies to state-subsidised housing. The National Development Plan recommended a “review [of] the eight year sales restriction on state-provided houses to find the correct balance between protecting property rights of vulnerable individuals and allowing for greater flexibility and locational choice.”\(^55\)

It is estimated that approximately 20 million land parcels in communal land areas and informal settlements are yet to be surveyed in South Africa\(^56\). The large number of properties that are likely to need surveying and registration as part of the mass roll out of the Department’s national upgrading support programme will particularly require alternative, incremental processes for granting improved land rights over time\(^57\). Similarly,

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\(^{53}\) Efficient delivery of housing and compliance with SPLUMA may require a special investigation.


\(^{57}\) For a full proposal on how this might be implemented, refer to Urban LandMark (2010), Incrementally Securing Tenure: an approach for informal settlement upgrading in South Africa. Available online at http://www.urbanlandmark.org/research/x31.php
land reforms in the rural sector will require careful reflection on individual rights as they relate to the customary management of land.

At a more fundamental level, given the sheer scale of challenges that have emerged, there are questions around whether South Africa can maintain its current system of deeds registration. While we have to avoid creating a second-class set of land rights, it is necessary to review whether the system in its current form can be implemented given capacity and affordability constraints.58

Any changes in the current systems of township establishment and deeds registration would need to be reviewed carefully by state officials and professionals active in the sector. Having the discussion around system amendments serves to raise the possibility of wider reaching reforms, with the aim of improving the land rights of as large a number of households as possible. This is particularly challenging in the areas of informal settlement upgrading and rural land rights.

In this area of policy and law reform, the recommended strategic actions are as follows:

1) investigate international examples of alternative systems of lower cost property registration
2) develop more streamlined systems of bulk registration of properties
3) investigate and make proposals for less complex methods of land surveying
4) understand and establish alternative forms of secure tenure which could apply in settlement upgrades, on rural land and on farms
5) give particular attention to more affordable forms of transfer of deeds where households are buying or selling residential property
6) convene a National Indaba or round table to discuss longer term policy reforms.

This part of the strategy would be implemented over a five year period and, as already mentioned, the learning from the current restoration process should feed directly into the longer term reform process.

5. STRENGTHENING THE DEMAND FOR PROPERTY REGISTRATION

To address the lack of awareness of the importance of title deeds on the part of residents, which often comes with being a first-time home owner, or being a first-time seller, there is a need for strategic action around improving property and financial literacy. These actions would make a contribution to improving participation in the housing market, and ensuring that the entire property market is more accessible and functional:

1) promote programmes of home ownership education59 , starting with people receiving transfer of title deeds under this restoration project, and people moving into state funded housing for the first time:
   a) the state’s own consumer education capacity, and that of the EAAB can be mobilised
   b) the banking sector and other agencies can also continue their processes of consumer education, and coordinate these with the Department of Human Settlements (collaboration and information sharing would be worthwhile)
2) promote access to market information which allows residents to understand the value of houses in their neighbourhoods, and to see what opportunities exist in other neighbourhoods, towns and cities60
3) information from the Deeds Registry can be made more accessible at a local level, and affordable

59 Urban LandMark was commissioned in 2012 by DHS to develop a training manual and booklets in nine languages on home ownership.
60 For example, see the Affordable Land and Housing Data Centre (http://www.alhdc.org.za/alhdc.cgi), and CityMark (http://www.housingfinanceafrica.org/citymark/).
4) intermediary organisations such as NGOs, CSOs and housing finance organisations (state and non-state) can be encouraged to promote education and information around home ownership, rental agreements, and land rights via other forms of tenure.

These actions require a longer term perspective, and are best done in collaboration with a range of interested agencies in the public and private sector.

6. OVERARCHING ACTIONS

There are a number of higher level actions needed to enhance the implementation of this strategy. These would include:

1) developing a communications strategy for the Title Restoration Project
2) conducting a diagnostic to measure local capacity, and to identify struggling provinces and municipalities for special support
3) raising awareness amongst potential deeds recipients around this initiative (with information of where and how people can apply for their deeds)
4) engaging the public and sectoral actors (e.g. the professions) at key points in this process
5) the Department of Human Settlements engaging proactively with other departments who are involved:
   a) Department of Justice (regarding the capacity of the State Attorney’s Office)
   b) Department of Cooperative Governance and Traditional Affairs (regarding roles, capacity and risks to municipalities)
   c) Department of Rural Development and Land Reform (regarding capacity and requirements of the Surveyor General, the Deeds Registry, and communal land issues)
   d) National Treasury (regarding MTEF funding commitments), and
   e) Department of Home Affairs (regarding confirmation of ID numbers and status of title recipients)
6) in addition to supporting the reduction in the title deed backlog, the EAAB has a number of actions to consider, which are specified in the Medium Term Strategic Framework 61:
   a) addressing the challenge of transforming patterns of land/property ownership
   b) increasing the numbers and capacity of estate agents operating at the low end of the market, especially as it applies to the future market in state-subsidised and gap market housing stock
   c) stimulating the secondary housing market, especially in the affordable market (subsidy and gap housing)
      i) improving access to market information and property valuation information for buyers and sellers in the affordable housing market
      ii) supporting housing consumer education
      iii) improving transactional support and monitoring the distribution of sales transactions in the affordable housing market

These actions are more immediate, and will serve to strengthen the effectiveness of the Title Deed Restoration Project.

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61 DHS (2014). Outcome Number 8: Sustainable Human Settlements and Improved Quality of Household Life, MTSF Chapter.
Table 3. Gantt chart of expected phases for the project

<table>
<thead>
<tr>
<th>Activities</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Oct-Dec</td>
<td>Jan-Mar</td>
<td>Apr-Jun</td>
<td>Jul-Sep</td>
</tr>
<tr>
<td><strong>1. Pre-1994 Stock</strong></td>
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<td></td>
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<tr>
<td>Confirmation</td>
<td></td>
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<tr>
<td>Implementation initiated</td>
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<tr>
<td>Implementation concluded</td>
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<td></td>
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<tr>
<td><strong>2. Post-1994 Stock</strong></td>
<td></td>
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<tr>
<td>Scoping: confirmation</td>
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<tr>
<td>Scoping: proposals</td>
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<tr>
<td>Pilots</td>
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<tr>
<td>Full roll-out</td>
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<tr>
<td><strong>3. Current and new project amendments</strong></td>
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<tr>
<td>Policy confirmation</td>
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<tr>
<td>Planning and reporting</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Streamlining implementation</td>
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</tbody>
</table>
STRUCTURE OF DEEDS RESTORATION PROJECT TEAM

To ensure that the Title Deeds Restoration Project is implemented effectively, the following implementation and governance arrangements are proposed.

The role of the EAAB is to provide leadership and support to achieve the project goal. While the organisation will at no time supplant the legislated roles and responsibilities of national government, provinces, and municipalities, it will play a central role in unlocking actions. During the project duration, it will provide logistical support (e.g., contract management, IT support, and administrative support) to guide, monitor, and oversee the planning and implementation processes, and will disburse national funds in line with the project mandate.

The EAAB will sign implementation protocols with each province, which will outline the nature of the mandate of the EAAB to support and work in each province. The EAAB will appoint additional capacity where needed, and in line with the protocols and budgets available.

The EAAB will report to Technical MinMec and MinMec on strategy, project progress, and project expenditure. The EAAB will report on a quarterly basis on transfers made, challenges encountered, and strategic-level corrective actions.

Where short-term policy changes are required, as they emerge in the process, the National Department should undertake the process of reviewing the policy and developing a standard operating procedure for dealing with special cases where transfers cannot be effected. The EAAB will also take direct action in some cases. For example, the EAAB would work closely with National Department of Cooperative Governance and Traditional
Affairs and SALGA to enable municipalities to fast track the establishment of townships, with special exemptions being granted in dealing with town establishment processes where necessary\textsuperscript{62}.

The DHS in collaboration with the EAAB and the Steering Committee should develop a support programme for dealing with special circumstances of struggling municipalities and provinces. The cases where this would apply would be based on a diagnostic evaluation done as part of this project.

**STEERING COMMITTEE**

The Steering Committee is the central guiding body for the project, with representation from national and provincial departments of human settlements, SALGA, relevant housing institutions and other organisations (to be finalised in discussion with DHS). The Constitution of the Steering Committee will be defined in partnership with DHS at an early stage in the process. The Constitution will specify the makeup of the committee, frequency of meetings, quorums for different types of meetings, targets, reporting requirements, and the like.

The Steering Committee will have oversight of (and monitor) the achievement of the project goal and delivery targets, and propose corrective actions during the key phases of the project. The Steering Committee should also plan and facilitate vertical knowledge sharing across the whole project structure, so that learning can be shared at key points during the implementation of the project, and so that lessons can be learnt which will inform the recommendations for future policy, programme and legal reforms.

**IMPLEMENTATION TEAMS**

Implementation Teams will be established by provinces and metropolitan municipalities. These teams will be supported by appointed Professional Resource Teams which will provide the types of advisory expertise needed to address the specific challenges in each province and municipality.

The Implementation Teams should be fully capacitated, and the structures standardised. Clear targets should be set for the officials assigned to perform tasks, and this may be linked to their performance areas. The Implementation Teams must put in place a standardised reporting framework which allows monthly monitoring of progress, and leads to coherent reporting on progress, additional capacity required, and corrective actions to be taken during the course of the project in order to achieve the agreed targets.

The nine provincial Implementation Teams, and the additional metro teams, will report directly to the EAAB, and present strategies, plans and progress reports to the Steering Committee. The EAAB will provide opportunities for horizontal knowledge sharing between the Implementation Teams.

Implementation teams should work closely with communications units which will use the media and Ward Councillors in tracing beneficiaries. Implementation teams must work closely with Capacity Development Units in dealing with beneficiary education. Implementation teams must also work closely with Legal Services, Ward Councillors and Community Development Workers (CDW’s) in dealing with issues like registration of customary unions with the Department of Home Affairs, encouraging the affected families to avail themselves for family mediation and referral of cases to Department of Justice and Social Development for mediation of family disputes\textsuperscript{63}.


\textsuperscript{63} Based on directives defined in DHS (2013). Transfer of pre-1994 Human Settlements Properties in South Africa. Annexure B Concept Note on Transfers (version 7).
INSTITUTIONAL AND ADVISORY SUPPORT

In line with a stakeholder engagement strategy, the EAAB will install institutional and advisory support groups to ensure that the National Department, the EAAB, and the Steering Committee are supported and directed by specialists. The Institutional Support group will be the main channel for wider consultations around mobilising current capacity, and negotiating future reforms needed in the sector. The Advisory Support group will be a repository of skills which can be accessed to address the overall project design and find solutions to specific challenges arising.

Overall the political accountability for achieving improvements in the transfer of title deeds will remain with the Ministry and Department of Human Settlements. However the EAAB will be accountable for project implementation.

RISKS AND RECOMMENDATIONS

For this restoration project to be effective in achieving the stated goal and purpose, there are a number of risks which need to be attended to. The potential risks associated with implementing the project need to be anticipated, and mitigating actions taken at the appropriate time. We look first at the risks and then the conclusion outlines the critical success factors which will ensure the viability of the project.

The potential risks and recommendations are outlined according to who they may impact.

To do with the costs of restoration and the capacity required within government:

Until the scale and nature of the challenges are more comprehensively calculated, the costs of restoring title to the rightful owners will not be clear. The price tag for the project is likely to be fairly large. It would be advisable in the early phases to be conservative in what the project promises to deliver until such time as the costs and budgets available are more fully established.

A number of previous initiatives to implement directives to address the acceleration of transfers have been attempted. Similarly, policy clarifications and guidelines have been put in place by DHS. If there is little commitment by provinces and municipalities to improve performance or to use the improved process guides or to comply with policies, then it is unlikely that the project will succeed. It is recommended that the project and associated targets be given the highest endorsement by the Ministry and Department, and that requisite budgets be allocated to ensure that there is an adequate response from the organs of state charged with implementation.

Across the board all indications are that more capacity is required in municipalities. A risk is that a ‘Rolls Royce’ system will be put in place that is difficult to implement at local level because of the capacity constraints. It is recommended that the costs of putting in the necessary expertise are carefully assessed, and wherever possible that the implementation plans are realistic. A focused national Steering Committee with a generous budget will be able to restore the system in the medium term by putting in the expertise that is required to unblock current processes, but in the longer term the feasibility of the system for municipalities must also be considered. The longer term system reform proposals should address municipal capacity as realistically as possible.

To do with the willingness to entertain policy and programme amendments in the short term:

The amendment of the eight year sales restriction has been suggested. This has been a politically and procedurally difficult amendment to effect in the last ten years, despite the BNG document suggesting a reduction of the restriction to five years. A risk will be that this amendment becomes a
sticking point in negotiations. Alternatively, the complete removal of the sales restriction may have other unintended consequences, which need to be considered. The recommendation is that the main message that this project should convey is that whether or not the sales restriction stays in place, or is reduced, that this is not a valid reason for provinces or municipalities to delay the transfer of deeds to the rightful owners. Ongoing delays in transfer lead to future backlogs.

While the central focus of the project is not on communal land, the issue of individual property rights on land managed customarily may become an issue that needs to be addressed. It is recommended that experts in this topic (legal and social) are brought on board if this becomes an issue.

To do with unintended consequences that may affect residents:

The added national and municipal attention that will be given to the transfer of deeds and the location of original owners will in some cases lead to disputes arising between current occupiers and identified owners. The unintended consequence would be that each case would need to be resolved in court, which will be costly to the claimants and counter-claimants, and to the state. Although some cases will correctly have to be referred to the courts, it is recommended that well-capacitated dispute resolution mechanisms be put in place from an early stage, so that most disputes can be settled locally, and without recourse to the courts.

In some cases, households will have taken up occupation of houses and been issued with their initial occupation papers (the so-called happy letter). But when a title deed is issued a different name appears on the deed. The Prevention of Illegal Eviction Act will prevent eviction of the initial occupant, in this case and in some other types of cases. This will need careful consideration and legal advice on how to fairly settle such cases.

Similarly, the effect of the imminent transfer of deeds through this project could set off a trend where the original owners start to evict tenants or people who have legitimately bought the house (but not amended the title deed). The eviction of tenants and legitimate home occupiers should be avoided by making clear from the start that the approach of provinces and municipalities should be very locally specific and responsive to individual situations. Municipalities or other organs of state should not act in a heavy handed manner. Their aim should be to restore the order of the system with the minimum of eviction and maximising responsiveness to local situations. That is why in this strategy there is an emphasis on the “rightful owner” which is defined as the person holding the property “by virtue of a legal or just claim”.

In pre-1994 stock, some residents may have decided either individually or as a group to not accept full ownership. Municipalities will need to be clear about whether they wish to maintain rental stock under council management, thus allowing people to remain as renters, or whether they wish to transfer all stock into private ownership by putting in place the necessary incentives. This may require amendment in the current property valuation and income band classification rules associated with the EEDBS. In all cases it should be clear to residents whether they are owners or tenants, and their participation in any transition process is crucial (accompanied by consumer education and support where there is a transition from council tenant to owner).

To do with developers of current and future housing projects:

By putting in place more rigorous processes to ensure transfer of title deeds at occupation, the costs and timeframes for projects will inevitably increase. An unintended consequence will therefore be to slow down delivery in new projects. While it is essential that the condition remains in place, that deeds be issued prior to project hand over, great attention should be given to streamlining the current processes to prevent an undue slow-down in delivery.
To do with professionals who have vested interests in the current land surveying and conveyancing systems:

In looking at longer term reforms to the system, there have been suggestions of redefining the roles of professionals. It is likely that there will be some push-back from professional institutes and registration councils. It is essential that professionals are included in discussions of possible reforms from the outset, and are challenged to offer solutions around bringing down the costs and timeframes of township establishment and property registration.

To do with the future direction of government policy and programmes:

The emphasis on restoring discipline and rigour in the current system is essentially about honouring the historical commitments to deliver what has been promised during the last two decades. An unintended consequence will be to draw too much attention to the private ownership model, and to draw attention away from the pressing need for more rental accommodation, and for alternative forms of secure tenure that might in some cases work better in settlement upgrading, on customary land, and for farm workers. The project is also not meant to suggest that so-called ‘free’ houses given to individual households will continue to be the main form of delivery in perpetuity. It is recommended that the restoration project be communicated in these terms, rather than unwittingly emphasizing private ownership and free housing as the main and only form of state delivery going forwards.

CONCLUSION: CRITICAL SUCCESS FACTORS

Therefore the critical success factors revolve around ensuring that the requisite political will, human resources and budgets are committed to the project to improve the chances of success. There needs to be attention to the institutional design of the governing arrangements for the project, with clear reporting lines, commitments and defined targets for all agencies involved, taking into account the existing roles and responsibilities defined in inter-governmental relations protocols.

In the public arena, the project should plan for focused consultations with affected parties, and develop clear and realistic messages about what the project can deliver. This implies that the development of a Communications Strategy and a Stakeholder Engagement Strategy are as important as developing workable governing arrangements and budgets for project implementation.

An important critical success factor will be the degree of willingness on the part of municipalities, provinces and national government to increase their allocation of resources to solve the problem, and to be flexible, creative and responsible in implementing the project. In other words, this project relies on achieving a common focus towards a defined outcome, namely the allocation of title deeds to rightful owners and fixing the flaws in the current system which have led to this situation.

END.
APPENDIX: MAPPING THE STAGES IN THE DEEDS PROCESS

In order for provinces and municipalities to chart where the township establishment or deeds transfer processes are stalled in various projects, the generic stages in the process should be laid out. There may be process sequence variations in local situations, but provinces and municipalities should adapt the generic model and gather information to locate each project (or set of incomplete title deeds) within this framework. This will then make it possible to apportion time and cost estimates to the restoration process.

Firstly, it must be emphasized that for title deeds to be issued and transferred to beneficiaries and/or rightful owners, that a much broader sequence of actions takes place to ensure the delivery of a viable housing project. The Housing Development Agency portrays this as a human settlement value chain.

The central ‘block’ in this diagram, township establishment, is the one which causes the main delays in the ultimate issuing of title deeds, as has been described.

Earlier in this document (Figure 3 on page 18), we outlined the simplified steps of township establishment.

Two useful resources are already available, in the form of the DHS documents “Housing Project Process Guide” and the “Draft Guidelines for Township Establishment Processes and the Registration of Transfer of Residential Properties”. The latter document has useful descriptions for each stage in the process discussed below.

The first figure illustrates the generic steps in the early land assembly planning process. Figure 8 traces the key steps in township establishment.
Tracing the process through from the perspective of beneficiaries and the transfer of title deeds, we rely on the work of Arcus Gibb for the Western Cape Province. Figure 9 charts the sequence of sub-routines leading to eventual transfer of title deeds.

The DHS guide (on township establishment processes and the registration of transfer of residential properties) provides a checklist, which is repeated here, with steps highlighted which have been raised as the most common causes of delay. These can be treated as steps in the processes which can be used to map where current delays are.

<table>
<thead>
<tr>
<th>1</th>
<th>PRE APPLICATION PHASE-LAND IDENTIFICATION AND ACQUISITION (1 month)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Undertake socio-economic survey and determine needs;</td>
</tr>
<tr>
<td>1.2</td>
<td>Identify land required for human settlement development (per Housing Chapter of IDP);</td>
</tr>
<tr>
<td>1.3</td>
<td>Undertake feasibility studies;</td>
</tr>
<tr>
<td>1.4</td>
<td>Establish registered land owners detail;</td>
</tr>
<tr>
<td>1.5</td>
<td>Land investigation into legal/cadastral position of land;</td>
</tr>
<tr>
<td>1.6</td>
<td>Undertake EIA – (see 3 below)</td>
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<tr>
<td>1.7</td>
<td>Title deed information and details of restrictions;</td>
</tr>
<tr>
<td>1.8</td>
<td>Identify any existing leases (registered/unregistered);</td>
</tr>
<tr>
<td>1.9</td>
<td>Restrictions - surrounding development;</td>
</tr>
<tr>
<td>1.10</td>
<td>Publish invitation to offer land for sale to Government;</td>
</tr>
<tr>
<td>1.11</td>
<td>Conclude purchase agreement; and</td>
</tr>
<tr>
<td>1.12</td>
<td>Where negotiations fail proceed to expropriation stage;</td>
</tr>
<tr>
<td>2</td>
<td>HOUSING SUBSIDY PROJECT APPLICATION (1 month)</td>
</tr>
<tr>
<td>2.1</td>
<td>MEC receives annual provincial housing subsidy allocation from National;</td>
</tr>
<tr>
<td>2.2</td>
<td>Municipality applies for reservation of project funding i.t.o. approved IDP;</td>
</tr>
<tr>
<td>2.3</td>
<td>MEC confirms reservation of project funding;</td>
</tr>
<tr>
<td>2.4</td>
<td>Municipality compiles project description and submit to MEC</td>
</tr>
<tr>
<td>2.5</td>
<td>MEC adjudicates - conditional approval of project funding;</td>
</tr>
</tbody>
</table>

| 2.6 | Municipality applies for project enrolment with NHBRC; |
| 2.7 | MEC confirms subsidy project approval; and |
| 2.8 | Municipality chooses procurement strategy |

3 ENVIRONMENTAL IMPACT STUDIES (8 months)

**EIA application**

| 3.1 | Complete application |
| 3.2 | Land owner consent |
| 3.3 | Peruse application |
| 3.4 | Submit application |
| 3.5 | Awaiting approval by competent authority |
| 3.6 | Receive acknowledgement of receipt of application |

**EIA Scoping phase**

| 3.7 | Public participation (Registration of IP and AP's) |
| 3.8 | Site assessment |
| 3.9 | Identification of Environmental Impacts |
| 3.10 | Prepare Scoping Report |
| 3.11 | Prepare Plan of Study for EIA |
| 3.12 | Avail Scoping Report for Public Comment |
| 3.13 | Public Review Process |
| 3.14 | Incorporate Public comments |
| 3.15 | Submit report to CA |
| 3.16 | Awaiting approval by CA |
| 3.17 | Receiving approval for continuation of EIA |

**EIA Report**

| 3.18 | Compile EIA report (Incorporate specialist rep) |
| 3.19 | Submit for public review |
3.20 Incorporate Public comment
3.21 Draft EMP
3.22 Review and finalise EIA report
3.23 Submit EIA report
3.24 Awaiting Environmental Authorisation
3.25 Granting of Environmental Authorisation

Record of Decision
3.26 Issue ROD
3.27 Notify all stakeholders of decision from CA
3.28 Notice of intention to appeal (10 days)
3.29 CA receive appeal (30 days)
3.30 Responding statement (30 days)
3.31 Appellant to respond to responding statement (30 days)
3.32 CA to acknowledge statement (10 days)
3.33 Decision of appeal indefinite

4 COMPILATION & SUBMISSION OF TOWNSHIP APPLICATION (14 months)
4.1 Obtain base mapping
4.2 Land Surveyor - Aerial Photo, contours & as built
4.3 Conveyancer - Conveyancers Report
4.4 Civil Engineers - Availability of services reports (bulk water, sewer, roads & stormwater)
4.5 Electrical Engineer - Availability of electrical services report
4.6 Geo-Technical Engineer - Geo-technical Investigation
4.7 Other: Circumstances might require additional studies to be conducted
4.8 Define planning parameters
4.9 Prepare draft layout plans
4.10 Test plans against engineering requirements
4.11 Legal Framework - Decision on application legislation to use
4.12 Prepare re-zoning/subdivision application
4.13 Submit application to local authority
4.14 Advertising of application
4.15 Obtain comments from external & internal departments
4.16 Preparation of conditions of establishment
4.17 Finalization of conditions of establishment
4.18 Local authority approval process
4.19 Approval of township by local authority

5 LAND SURVEYING & CONVEYANCING (5 months)
5.1 Preliminary calculations
5.2 Pegging of stands
5.3 Prepare draft General Plan (GP)
5.4 Submit GP to Surveyor General
5.5 Initial examination of GP
5.6 Advise amendments/corrections
5.7 Amend/correct GP and re-submit
5.8 Final examination of GP
5.9 Approval advice of GP
5.10 Preparation of application
5.11 Advertising of removal or restrictions/court order
5.12 Advising Deeds Office
5.13 Opening of Township Register
5.14 Drafting of application
5.15 Submission of approved GP to Deeds Office
5.16 Lodge documents at Deeds Office
5.17 Conveyance procedures
5.18 Registerable erf (subject to clearance certificates)

6 SALES ADMINISTRATION (12 months)
6.1 Set up allocation procedures
6.2 Distribute application forms or sign up applicants
6.3 Process application forms and submit for approval
6.4 Approval of individual subsidies
6.5 Inform / Contact approved applicant
6.6 Registration of Transfer
6.7 Signing of Legal Documentation e.g. Deed of Sale
6.8 Obtain clearance certificates
6.9 Prepare all transfer documents
6.10 Lodge documents at Deeds Office
6.11 Register transfer
6.12 Register property owner

7 LAND SERVICING (32 months)
7.1 Services agreements
7.2 Determining design standards
7.3 Prepare draft agreement
7.4 Negotiate with local authority
7.5 Sign agreement
7.6 Establish available capacity
7.7 Assessment of Physical Features of site
7.8 Incorporate topographical surveys
7.9 Incorporate geo-technical surveys
7.10 Determine flood lines
7.11 Bulk Services Investigation/Feasibility
7.12 Establish connection points
7.13 Preliminary Design Report
7.14 Prepare preliminary design
7.15 Prepare abbreviated specifications
7.16 Prepare cost estimates
7.17 Draft report
7.18 Approval by Local Authority
7.19 Finalisation of Level of Service
7.20 Review product quality/cost
7.21 Funding application to electricity regulator
7.22 Detail Design
7.23 Detail Design and Specifications
7.24 Obtain approval from local authority
7.25 Tender Process and Award
7.26 Call for tenderers/issue documents
7.27 Evaluate tenders & tender report
7.28 Review & award tender
7.29 Appoint contractor
7.30 Completion of Contractual Requirements
7.31 Approve insurances & guarantees
7.32 Approve Occupational Health & Safety (OHS) Plan
7.33 Determine contractual dates & communication procedures
7.34 Construction of Services
7.35 Construction of civil services
7.36 Construction of electricity reticulation
7.37 Measurement & interim certification of completed work
7.38 Resolve claims and extra work
7.39 Phase 2 Geo-technical Investigation
7.40 Completion/Handover Process
7.41 Arrange completion inspections
7.42 Handover completed work to local authority
7.43 Substantial completion certificate by engineer
7.44 Serviced erf (clearance certificate issued by Local Authority)
7.45 Maintenance period
7.46 End of maintenance inspection & rectification
7.47 Final completion certificate

8 HOUSE CONSTRUCTION (18 months)
8.1 Choose house plan
8.2 Confirm elementary Bill and specifications
8.3 Determine extraordinary development conditions and required precautionary measures as per Variation Manual
8.4 Prepare cost estimates
8.5 Approval of designs and cost
8.6 Undertake detail design and specifications
8.7 Advertise tender call
8.8 Tender assessment and award
8.9 Appoint contractor
8.10 Completion of Contractual Requirements
8.11 Approve insurances & guarantees
8.12 Approve Occupational Health & Safety (OHS) Plan
8.13 Determine contractual dates & communication procedures
8.14 Submission of individual building plans
8.15 Construction of Houses
8.16 Structural inspections
8.17 Measurement & interim certification of completed work
8.18 Resolve claims and extra work
8.19 Completion Handover Process
8.20 Arrange completion inspections (building control)

8.21 Accept handover in terms of contract
8.22 Completed top structure
8.23 Retention period snag list
8.24 End of maintenance inspection & rectification
8.25 Final completion certificate
8.26 NHBRC enrolment certificate

9 PROJECT HANDOVER (3.5 months)
9.1 Occupation of houses by beneficiaries
9.2 Title deed handed over to the beneficiary
9.3 Final subsidy drawdown
9.4 Final completion at end of maintenance period.

Although each phase was apportioned a duration, the following diagram illustrates how the phases overlap.

Figure 10. Housing process overview. Source: DHS Housing Project Process Guide

The purpose of this Appendix has been to suggest a framework for the provinces and municipalities to map where the processes are delayed, and to estimate time and costs of restoration.