



human settlements

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DEPARTMENT OF HUMAN SETTLEMENTS

POLICY FOR BENEFICIARY MANAGEMENT IN THE NORTH WEST PROVINCE 2024

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Let's Grow North West Together

EDICT OF GOVERNMENT

To promote public education and public safety, equal justice for all, a better-informed citizenry, the rule of law, world trade, and world peace, this policy guideline is hereby made available on a non-commercial basis, as it is the right of all humans to know and speak the laws that govern them.

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ABBREVIATIONS

ABBREVIATION	FULL DESCRIPTION
ADR	Alternative Dispute Resolution
DHS	Department of Human Settlements
DRP	Dispute Resolution Panel
FHF	First Home Finance
HOD	Head of Department
HSDG	Human Settlement Development Grant
HSS	Housing Subsidy System
IDP	Integrated Development Plan
ITA	Income Tax Act
LGHS	Local Government and Human Settlements
MEC	Member of the Executive Council
NDHS	National Department of Human Settlements
NHBRC	National Home Builders Registration Council
NHNR	National Housing Needs Register
NHSDB	National Housing Subsidy Data Base
SAPS	South African Police Service

DEFINITIONS

CONCEPT	DEFINITION
Adjudication	Adjudication refers to a hearing held by legally qualified practitioners appointed by the head of the provincial Department of Human Settlements on disputes regarding claims to the rights to ownership of government subsidy-financed houses.
Adjudicator	The Adjudicator refers to a legal practitioner appointed by the Head of the Provincial Human Settlements Department to serve on a panel of adjudicators to preside over disputes regarding claims to the right to ownership of government housing subsidy financed houses.
Affected property	Affected property refers to a residential property that was allocated to a housing subsidy scheme approved beneficiary, but the transfer of ownership has not been realised and the property still belongs to the municipality or the provincial government and in respect of which claims to the right to ownership has been received from persons other than the approved beneficiary.
Applicant	Applicant refers to a person who tendered a housing subsidy application and the application.
Appeal Adjudicator	Appeal Adjudicator refers to a legal practitioner appointed by the Head of the Provincial Human Settlements Department to serve on a panel of appeal adjudicators to preside over appeal applications lodged by persons who are not satisfied with the ruling of the Adjudication Panel regarding claims to the right to ownership of government housing subsidy financed houses.
Approved beneficiary claimant	Approved beneficiary claimant refers to a person who has lodged a claim for the right to ownership of a Government subsidy financed residential property.
Beneficiary	Beneficiary refers to a qualifying person who received a housing benefit from the State.
Code	The Code refers to the National Housing Code as contemplated in Section 1 of the Housing Act, Act 107 of 1997, as amended, and Part 2, Section 4, subsection (6) states that the Code shall be binding on the provincial and local spheres of government.
Cohabiting	Cohabitation refers to when an unmarried couple lives together in a long-term relationship that resembles a marriage. Seeing as a couple is not married, cohabitation is not regulated by law and does not receive the same protection as marriage as there is no common law marriage in South Africa and the duration that couples spend

	living together does not mean that marriage came into existence.
Contractual commitment	Contractual commitment refers to cases where the organ of the State signed a deed of sale with or issued a deed of grant in favour of the approved beneficiary.
Deceased beneficiary	A deceased beneficiary refers to an approved beneficiary who passes away.
Deceased estate	A deceased estate refers to the total portfolio of assets that belonged to a person who has died.
Deed of Grant	A deed of Grant refers to a legally binding deed in terms of which a subsidy-financed property is granted to an approved beneficiary with the conditions and provisions of which will be converted into the title deed in the Office of the Registrar of Deeds once the transfer of ownership is registered.
Deed of Sale	A deed of Sale refers to a legally binding agreement of sale concluded with an approved beneficiary for the sale of the subsidy-financed property to the beneficiary where transfer is deferred until the township is proclaimed.
Delegation	<p>Delegation refers to the Housing Act, Act 107 of 1997, as amended, Part 3, Section 7, Sub-sections (1), (2), (3) and (5):</p> <ol style="list-style-type: none"> (1) Every provincial government, through its MEC, must, after consultation with the provincial organizations representing municipalities as contemplated in section 163(a) of the Constitution, do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy. (2) For sub-section (1) every provincial government must through its MEC: <ol style="list-style-type: none"> (a) determine provincial policy with respect of housing development; (b) promote the adoption of provincial legislation to ensure effective housing delivery; (c) take all reasonable and necessary steps to support and strengthen the capacity of municipalities to effectively exercise their powers and perform their duties with respect of housing development; (d) co-ordinate housing development in the province; (e) take all reasonable and necessary steps to support municipalities in the exercise of their powers and the performance of their duties in respect of housing development;

	<p>(f) when a municipality cannot or does not perform a duty imposed by this Act, intervene by taking any appropriate steps in accordance with section 139 of the Constitution to ensure the performance of such duty; and</p> <p>(g) prepare and maintain a multi-year plan in respect of the execution of the province of every national housing programme and every provincial housing programme, which is consistent with national housing policy and section 3(2)(b), in accordance with the guidelines that the Minister approves for the financing of such a plan with money from the Fund.</p> <p>(3) An MEC must:</p> <p>(a) administer every national housing programme and every provincial housing programme which is consistent with national housing policy in section 3(2)(b), and for this purpose may, in accordance with that programme and the prescripts contained in the Code, approve:</p> <p>(I) any projects in respect thereof; and</p> <p>(II) the financing thereof out of money paid into the provincial housing development fund as contemplated in section 12(2);</p> <p>(b) determine provincial housing development priorities in accordance with national housing policy;</p> <p>(c) apply procurement policy in respect of housing development determined by the Minister in terms of section 3(2)(c); and</p> <p>(d) administer the assets contemplated in section 14.</p> <p>(4) (a) The MEC must establish a panel of not more than six persons to advise the MEC on any matter relating to housing development.</p> <p>(5) The MEC may, subject to conditions he or she may deem appropriate in any instance:</p> <p>(a) delegate any power conferred on him or her by this Act; or</p> <p>(b) assign any duty imposed upon him or her by this Act, to an officer or employee of the department responsible for the administration of housing matters in a province, either in her or her personal capacity or by virtue of the rank he or she holds or the post he or she occupies: Provided that the delegation or assignment does not prevent the person, who</p>
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	made the delegation or assignment from exercising that power or performing that duty to himself or herself.
Department	The department refers to the North West Department of Human Settlements.
Deregistration, or the cancellation of registration of transfer	<p>Deregistration or the cancellation of registration of transfer refers to a process whereby the name of a property owner is removed from the title deed and the Deeds Register of the Chief Registrar of Deeds and is necessary to:</p> <ol style="list-style-type: none"> a) Enable a beneficiary who has acquired registered ownership of a government-subsidised property in his/her name, but who, for various reasons, could not take possession and/or occupation of the property, to qualify again for a housing subsidy. Current qualification criteria, <i>inter alia</i>, stipulate that an applicant for a subsidy should not have previously received a housing subsidy, nor owned a residential property. b) Re-allocate the vacant, but complete, subsidised property registered in the name of a missing beneficiary to a new subsidy beneficiary, which would not be possible if the property remains registered in the name of the original housing subsidy beneficiary. <p>These reallocation initiatives must take place to avoid a situation where the house remains unoccupied for an extended period, thereby exposing it to the risk of vandalism and illegal occupation.</p>
Developer	Developer refers to the organ/institution planning and implementing human settlement developments as mandated by the Housing Act, Act 107 of 1997, as amended. In the case of the North West Province, the Department of Human Settlements remains the Developer, unless a Local Municipality has been assigned/accredited under the Housing Act, Act 107 of 1997, as amended, and the Municipal Accreditation Framework.
Dispute Resolution Panel	Dispute Resolution Panel refers to a Dispute Resolution Panel established under the Income Tax Act, Act 58 of 1962, as an Alternative Dispute Resolution mechanism for resolving disputes relating to Transfer Pricing in International Transaction.
Dispute	Dispute refers to disagreement or argument.
Duplicate dependent	A duplicate dependent in the context of this Policy refers to a situation where the identity number of a financial dependent of a housing subsidy applicant appears on the Housing Subsidy System attached to another approved housing subsidy application.
Fraud	Fraud refers to the unlawful and intentional making of a

	misrepresentation which causes actual prejudice, or which is potentially prejudicial to another.
Happy Letter	A Happy Letter refers to a letter that an approved beneficiary signs when a housing unit is handed over to the approved beneficiary on the completion of the housing unit, which serves as proof that the approved beneficiary is happy with the housing unit that he/she received. This Happy Letter <u>cannot</u> be signed by any other person than the approved beneficiary.
Intestate	Intestate describes the situation where a person dies without a Will and has not declared his/her wishes regarding the disposal of his/her property.
Marriage	A person in South Africa can get married in terms of a civil marriage, customary marriage, religious marriage, or a civil union.
Marriage in community of property	Marriage in community of property refers to marriage in terms of the law where all the assets in the marriage are equally shared in ownership between the spouses.
Marriage out of community of property	Marriage out of community of property refers to marriage in terms of the law where the assets in the marriage belong to the individual spouse who acquired and owned or still owns the relevant assets. The ownership of the asset is thus not shared.
Master	Master means a Master, Deputy Master, or Assistant Master of the Supreme Court appointed under Section 2 of the Administration of Estates Act, Act 66 of 1965, as amended.
Missing or untraceable beneficiary	Missing or untraceable beneficiary refers to a housing subsidy beneficiary whose application has been approved and the beneficiary cannot be traced to take occupation.
National Department	National Department refers to the National Department of Human Settlements.
Municipality	Municipality refers to a municipality as contemplated in Section 155 of the Constitution of the Republic of South Africa, Act 108 of 1996.
Ownership of immovable property	In terms of the Deeds Registries Act, Act 47 of 1937, as amended, the ownership of land may be conveyed by one person to another only using a deed of transfer executed or attested by the Registrar of Deeds. Immovable property may only be transferred in this manner. The owner of the property is the person whose name is registered on the title deed of the relevant property in the Deeds Office. The death of an owner of immovable property terminates ownership. Ownership is only transferred to an heir after registration of the property in the name of the heir in the Deeds Office. If a property has been transferred to a housing subsidy beneficiary and the title deed is in

	his/her possession, the rights to the property pass to the deceased estate first and then to the heirs.
Perjury	Perjury refers to the unlawful and intentional making of a false statement during a judicial proceeding by a person who has taken the oath or made an affirmation before, or who has been admonished by somebody competent to administer or accept the oath, affirmation, or admonition.
Policy	Policy refers to the Policy for Beneficiary Management in the Department of Human Settlements in the North West Province.
Polygamy	Polygamy refers to marriage to more than one spouse at a time. The most typical forms of polygamy are polygyny, in which cowives share a husband, or polyandry, in which co-husbands share a wife.
Power of Attorney	Power of Attorney refers to a written authority to represent or act on another's behalf in private affairs, business, or some other legal matter.
Regularization of occupants	The regularization of occupants refers to the decision taken after due process was followed to approve the allocation and transfer of ownership of an affected property to a non-approved occupant who must be a South African citizen or a person in possession of a Permanent Residence Permit, whether the occupant satisfy the housing subsidy qualification criteria or not.
Rightful beneficiary	Rightful beneficiary refers to the approved beneficiary as defined above.
Subsidy-financed property	Subsidy-financed property refers to a residential property that was created through the application of any of the National Housing Programmes that confers registered ownership rights on approved housing subsidy beneficiaries as defined in the National Housing Code, 2009.
Succession	Succession refers to the process by which assets are transferred from one family member to the next.
Title Deed	A Title Deed refers to documentary proof of ownership in terms of the Deeds Registries Act 47 of 1937.
A Will	A Will refers to a codicil and any other testamentary writing. It is a legal document containing the declaration of the person's wishes regarding the disposal of his/her property after death. The most basic compulsory requirements of a valid Will include that the Will must be in writing, the Will must be signed by the testator and two witnesses all in the same place at the same time and on each page of the document, and any subsequent changes to a Will must be effected in the same way.

1. INTRODUCTION

The Constitution of the Republic of South Africa, Act 108 of 1996, makes provision for everyone to have a right to access to adequate housing, ergo, the Department of Human Settlements, in conjunction with all its stakeholders and role-players should do everything in its power to progressively realise this right of the country's citizens. A whole host of functions are set out for the National and Provincial Departments of Human Settlements in the Housing Act, Act 107 of 1997, as amended, which mandates emanated from the Constitution, Act 108 of 1996.

Beneficiary Management is one aspect of the host of functions set out in the Housing Act, Act 107 of 1997, as amended, and the Housing Code, 2009. Beneficiary management involves systematically collecting, verifying, and approving housing subsidy applications for all human settlement policy programs. This includes, amongst others, receiving housing subsidy applications, screening such applications, capturing applicants' details, communicating the outcome of applications – whether successful or not, and locating those beneficiaries who have been approved but cannot be located or traced to take occupation of completed housing units. Beneficiary management therefore involves the general and detailed administration and management of housing subsidy beneficiary affairs.

The Beneficiary Management Policy was initially approved by the Member of the Executive Council in 2017, however, due to various legislative changes and policy shifts. The reviewed Policy is effective from the date of approval by the Member of the Executive Council thereby repealing the Policy that was approved in 2017.

2. PURPOSE AND OBJECTIVES OF THE POLICY

This policy is developed to provide guidelines in the Department of Human Settlements to be followed by providing procedures for identifying rightful beneficiaries, providing procedures on the breakdown of cohabiting relationships, providing procedures to deal with duplicate dependents, providing procedures for registering rightful heirs upon the death of beneficiaries, and by providing procedures in the tracing and deregistration of missing/untraceable beneficiaries.

3. SCOPE OF APPLICABILITY OF THE POLICY

This policy will apply in the following instances:

- 3.1. The application of the pre-emptive clause.
- 3.2. The identification or tracing of rightful beneficiaries.
- 3.3. The breakdown of cohabitation relationships.
- 3.4. Duplicate dependants of government subsidised houses:
 - 3.4.1. To single applicants of housing subsidies who have willingly allowed another person to fraudulently utilise the identity particulars of their financial dependants to gain access to housing subsidy benefits.
 - 3.4.2. To single applicants who have tendered housing subsidy applications utilising the identity particulars of another person's financial dependants to gain approval.
 - 3.4.3. To single applicants who have tendered housing subsidy applications utilising the identification particulars of their legal financial dependants whose particulars are registered on the HSS against another approved housing subsidy beneficiary's approved subsidy and the applicant is unaware that such an approved beneficiary has utilised the identification particulars of his/her financial dependants to gain access to the housing subsidy benefits.
 - 3.4.4. To beneficiaries of approved housing subsidies who have provided other persons access to the identity particulars of their financial dependants to allow such persons to apply for housing subsidies.
- 3.5. Deregistration of missing/untraceable beneficiaries.
- 3.6. Deregistration of deceased beneficiaries and re-registration of rightful heirs.

4. ENFORCEMENT

The risk of not complying with this Policy in conjunction with relevant and applicable legislative and policy frameworks ultimately bears negative consequences of development and legal risks from being accountable to justify actions or decisions made incorrectly and therefore knowingly accepting legal responsibility for loss of

life. Therefore, the risks need to be managed, and the responsibility lies with the accountable officials.

5. GUIDING PRINCIPLES OF THE POLICY

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

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

6. STRATEGIC INTENT

The strategic intent of this Policy is to provide procedures to:

- 6.1. The application of the pre-emptive clause.
- 6.2. Deregister deceased, missing, or untraceable beneficiaries.
- 6.3. Regularize issues surrounding duplicate dependents.
- 6.4. Re-registration of rightful heirs.
- 6.5. Regularize registration in the breakdown of cohabiting relationships.
- 6.6. Provide dispute resolution measures.

7. LEGISLATIVE MANDATE

The following legislative, policy, and strategic frameworks are the primary enabling legislation insofar as they pertain to the management of beneficiary matters and should therefore not be read and applied in isolation, but as part of an array of primary and secondary enabling legislative, policy, and strategic frameworks, and those legislative, policy and strategic frameworks that are not mentioned herein, should be consulted, if needs be:

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

The Constitution of the Republic of South Africa, Act 108 of 1996, Section 9, confirms that everyone is equal before the law and has a right to equal protection and benefit of the law, and quality which includes the full and equal enjoyment of all rights and freedoms, and that the State, therefore, may not unfairly discriminate directly or indirectly against anyone on any one or more grounds. It further states in Section 10, that everyone has an inherent right to dignity and the right to have their dignity respected and protected, which is critical in the implementation of every national housing programme. Essential for the Department to observe is Section 26 which prescribes that everyone has a right to have access to adequate housing and that the State (insofar as this Policy refers to the Department of Human Settlements in the North West Province) must take reasonable legislative measures within its available resources to achieve this progressive right.

7.2. Deeds Registries Act, Act 47 of 1937, as amended

The Deeds Registries Act, Act 47 of 1937, as amended, serves to regulate the functions and laws related to title deed transfer as well as the successful registration of title deeds in South Africa.

7.3. Housing Act, Act 107 of 1997, as amended

The Housing Act, Act 107 of 1997, as amended, is the primary piece of legislation for the housing mandate in South Africa and it legally entrenches policy principles outlined in the 1994 White Paper on Housing which provides for sustainable housing development processes, laying down general principles for housing development in

all spheres of government, defining functions of national, provincial and local governments concerning housing development, and provides a foundation for the financing of national housing programmes.

The Minister of Human Settlements in terms of section 3(4)(j)(ii) of the Housing Act, Act 107 of 1997, as amended, has decided to further regulate the application of the Ministerial National Norms and Standards to ensure that the government's housing programmes provide for the optimal use of the housing subsidy amounts in the pursuit of an equitable housing assistance dispensation and the creation of sustainable integrated human settlements.

7.4. Housing Code, 2009

The National Housing Code, 2009, emanates from the Housing Act, Act 107 of 1997, as amended, sets out the underlying principles, guidelines, norms, and standards which apply to the government's various housing subsidy assistance programmes that were introduced in 1994. The main purpose is to provide an easy-to-understand overview of the various housing subsidy instruments to assist low-income households in accessing adequate housing.

The housing vision is underpinned by principles of sustainability, viability, integration, equality, reconstruction, holistic development, and good governance. South Africa's housing policy and strategy must contribute to a non-racial, non-sexist, and democratic integrated society. The goal is to improve the quality of living of all South Africans with an emphasis on the poor and those who cannot independently satisfy their basic housing needs.

7.5. Intestate Succession Act, Act 81 of 1987, as amended

The Intestate Succession Act, Act 81 of 1987, as amended, was enacted to determine who will inherit the deceased's estate in the circumstances where the deceased died without leaving a Will or if the deceased leaves an invalid Will. If a person dies and leaves an estate which cannot be distributed in terms of a Will, the Act will come into operation. The Act applies when the deceased did not leave a

valid Will or legal testamentary instrument; the testator/deceased did leave a Will, but it is wholly or partially invalid; and/or the testator/deceased left a Will but failed to dispose of the whole estate.

It is very important to understand the Act as it plays a key role in determining how a deceased's estate is administered when there is no Will. It is also important to note that it is not adequate to merely draw up a Will as one should also ensure that the Will meets all the validity requirements provided for in the Wills Act, Act 7 of 1953, as amended. If a Will fails to meet these validity requirements, the Intestate Succession Act, Act 81 of 1987, as amended, will automatically become applicable and any desires that the deceased might have had regarding the administration and distribution of his/her estate will not be carried out. It is critical that a skilled and experienced professional draft a Will to ensure that one's desires regarding the administration and distribution of the estate are met.

Of prominence is the 2005 Constitutional Court decision in *Bhe and Others v Magistrate, Khayelitsha and Others; Shibi v Sithole and Others; South African Human Rights Commissions and Another v President, RSA and Another*. Before the Constitutional Court judgement, the succession rules of most African people were governed by Section 23 of the Black Administration Act, Act 38 of 1927, and Section 1(4)(b) of the Intestate Succession Act, Act 81 of 1987, as amended. An African person's estate devolved under customary law unless he/she was married in a civil marriage in community of property or was in possession of a letter of exemption. Until 1988, the Black Administration Act, Act 38 of 1927, provided that the default legal position of marriages for Africans was that they were married out of community of property. Most death that occurred before 1998 were thus governed by customary laws of succession. The system of customary law applicable to intestate succession was based on a system of male primogeniture in which the intestate line of succession included only males.

In 1998, recognition of customary marriages changed and from that year, all customary marriages were deemed to be marriage in community of property. From 1998 onwards, because most marriages were deemed to be marriages in community of property, customary rules of succession only applied where there was a letter of

exemption. Because of the *Bhe* judgement, property rights devolve by intestacy where the death occurs without a Will. Because many housing subsidy beneficiaries have not instituted Wills, their subsidy houses will pass in terms of intestacy to their heirs, being in most cases, their spouses and children, proportionally. However, where the deceased left a Will, his/her estate would devolve according to the provisions of the Will.

7.6. Law of Succession Amendment Act, Act 43 of 1992

The Law of Succession Amendment Act, Act 43 of 1992, changed the General Law Amendment Act, Act 32 of 1952 regarding certain provisions. It also amended the Wills Act, Act 7 of 1953 to provide more precise definitions of certain terms, further regulate the formalities in the execution of Wills, and provide for cases where such formalities are not complied with. Additionally, it granted the court the power to declare a Will revoked, regulated the effect of divorce or annulment of a marriage on a Will, and provided for the vesting of certain benefits from the testator's Will in the surviving spouse or the descendants of certain persons. The Act also provided for the interpretation of Wills in certain cases, repealed the provision for a soldier's Will, and further regulated the competency of certain persons to receive a benefit under a Will or to be nominated as executor. The Administration of Estates Act, Act 66 of 1965, was amended to regulate certain powers and functions of the Master about Wills. Lastly, the Intestate Succession Act, Act 81 of 1987, was amended to provide for the vesting of certain benefits from an intestate estate in the surviving spouse or the descendants of certain persons.

7.7. Wills Act, Act 7 of 1953, as amended

The Wills Act, Act 7 of 1953, as amended, holds significant importance in the South African legal system as it governs the creation, interpretation, and execution of Wills. The Act is the cornerstone of the legal framework governing Wills in South Africa. The Act provides safeguards to protect the interests of both testators and beneficiaries, promoting fairness and clarity in the administration of estates.

The Act defines testamentary capacity as the legal and mental capacity required to create a valid will. According to the Act, a person must be of sound mind and at least 16 years old to possess testamentary capacity. This requirement ensures that individuals have the necessary understanding to make informed decisions regarding the distribution of their assets.

The Act outlines specific formalities that must be adhered to for a Will to be considered valid. These requirements include that the Will must be in writing, either handwritten or typed; the testator must sign the Will or acknowledge their signature in the presence of two or more competent witnesses; and the Will must be signed by two or more competent witnesses who are present at the same time as the testator, and they must also sign the document.

The Act provides provisions for the cancellation and amendment of Wills. A testator can revoke a will by creating a new one or physically destroying the existing one intending to cancel it. Amendments can be made through the execution of a codicil, which is a document that modifies specific provisions of an existing Will.

If a person dies without a valid Will, the Act determines the rules of intestate succession. These rules outline how the deceased person's estate Will be distributed among surviving family members according to a specific order of priority, ensuring fairness and clarity in the absence of a Will.

The Act addresses certain disqualifications and forfeitures related to Wills. For example, a person who signs a will as a witness cannot benefit from that Will unless it is otherwise expressly provided. Additionally, certain persons involved in the drafting, or the execution of a Will may be disqualified from receiving any benefits under the Will.

The Act allows for judicial interpretation of Wills and provides a framework for resolving Will-related disputes. Interested parties can approach the court to seek clarification or challenge the validity of a Will on various grounds, such as lack of testamentary capacity, undue influence, fraud, or improper execution.

7.8. Policy on Housing Development Project Processes for the Department of Local Government and Human Settlements, 2018

This Policy seeks to, in line with the purpose of the policy, provide guidelines, and procedures concerning housing development processes which are project-based to ensure that all human settlement projects are implemented uniformly, effectively, and efficiently, ensuring optimum utilization and minimal wastage of state resources. The purpose of this Policy is to assist with the development and implementation of quality contract and project management plans for housing projects that will be undertaken by the Department, ensure that quality is an integral part of every housing project, reduce re-work and/or extensions on/of housing projects, compliance with all relevant sector-related norms, standards and legislative prescripts ensure that houses meet the satisfaction of the beneficiaries of low-cost housing options as the customers of the Department.

7.9. Guidelines for Implementing Housing Consumer Education in the North West Province, 2022/2023

The purpose of the Housing Consumer Education Guideline is to establish a clear vision and a coherent yet integrated framework instrument that can guide housing consumer education and awareness interventions. The Housing Consumer Education Guideline seeks to ensure and achieve uniformity and standardization in the implementation of housing consumer education by the Department of Human Settlements and other implementing agents throughout the North West Province.

8. ROLES AND RESPONSIBILITIES

8.1. NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS

- 8.1.1. Sets national human settlement policy and publishes subsidy quanta with applicable variations under the authority of the Minister for Human Settlements regularly as it pertains to human settlement delivery.
- 8.1.2. Is the custodian of the Housing Subsidy System (HSS) and regulates the HSS.

- 8.1.3. Is the custodian of the National Housing Needs Register (NHNR) and regulates the NHNR.

8.2. PROVINCIAL DEPARTMENT OF HUMAN SETTLEMENTS

- 8.2.1. To implement this Policy regarding the management of beneficiaries' matters.
- 8.2.2. Use the HSS and NHNR under national user account rules and regulations.
- 8.2.3. Report regularly on the usage of HSS and NHNR in the Province to the National Department of Human Settlements.
- 8.2.4. Conduct housing consumer education to potential and qualifying beneficiaries of housing subsidy programmes.

8.3. LOCAL MUNICIPALITIES

- 8.3.1. Assist in the identification and tracking of rightful beneficiaries.
- 8.3.2. Assist in the implementation of this Policy, where required.
- 8.3.3. Administer the National Housing Needs Register (NHNR).

9. POLICY DIRECTIVES

SECTION 1: PRE-EMPTIVE CLAUSE

- 9.1. "Acquired" refers to when a beneficiary obtained keys to a property, i.e., the pre-emptive clause is applicable from when a beneficiary received the keys to his/her property. Any transfers of title after the handover of the keys are purely administrative.
- 9.2. The restriction of sale on state subsidised housing commonly referred to as the pre-emptive right clause, was introduced into law through the Housing Act, Act 107 of 1997, as amended, in Sections 10A and 10B, which contains a restriction on the voluntary and involuntary sale of state-subsidised housing within eight (8) years from the date of on which the property was acquired.

Therefore, it is unlawful for the recipient of a government-subsidised house to sell it before the recipient has lived there for at least eight (8) years.

9.3. In the First Home Finance (FHF) subsidy program, an exemption has been passed of the FHF program from the sale restriction clause from the provisions of Section 10B(5) and 10B(8) of the Housing Act, Act 107 of 1997, in government gazette number 50719 on 27 May 2024:

9.4. For beneficiaries of low-cost housing units, the applicant should sign the handover certificate/happy letter to acknowledge the pre-emptive right clause. A pro forma is attached in Annexure A.

9.5. Restriction on voluntary sale of state-subsidised housing

9.5.1. Notwithstanding any provisions in any other law, it shall be a condition of every housing subsidy, as defined in the Code, granted to a natural person in terms of any national housing program for the construction or purchase of a dwelling or serviced site, that such person shall not sell or otherwise alienate his/her dwelling or site within eight (8) years from the date of which the property was acquired by that person unless the dwelling or site has first been offered to the provincial housing Department.

9.5.2. The provincial housing Department to which the dwelling or site has been offered shall endorse in its records that the person wishes to vacate his/her property and relocate to another property and is entitled to remain on a waiting list of beneficiaries requiring subsidised housing.

9.5.3. When the person vacates his/her property, the relevant provincial housing Department shall be deemed to be the owner of the property, and an application must then be made to the Registrar of Deeds by the provincial housing Department for the title deed of the property to be endorsed to reflect the Department's ownership of that property.

- 9.5.4. No purchase price or other remuneration shall be paid to the person vacating the property, but such person will be eligible for obtaining another state-subsidised house, should he/she qualify for it.

9.6. Restriction on involuntary sale of state-subsidised housing

- 9.6.1. Notwithstanding any provisions to the contrary in any law, it shall be a condition of every housing subsidy, as defined in the Code, granted to a natural person in terms of any national housing program for the construction or purchase of a dwelling or serviced site, that such person's successors in title or creditors in law, other than creditors in respect of credit-linked subsidies, shall not sell or otherwise alienate his/her dwelling or site unless the dwelling or site has first been offered to the relevant provincial housing Department at a price not greater than the subsidy which the person received for the property.
- 9.6.2. Any such offer to the provincial housing Department must be made in writing and accepted or rejected by the Member of the Executive Council (MEC) within sixty (60) days from receipt thereof.
- 9.6.3. If such an offer is accepted, the purchase price shall be determined by agreement between the MEC and the person or creditor concerned, or in the event of no agreement reached, by a valuer acceptable to both parties and registered per the Valuers Act, Act 23 of 1982, as amended.
- 9.6.4. The purchase price is determined per section 9.3.3. shall be financed by the MEC out of the provincial housing development fund.
- 9.6.5. An MEC may grant exemption from the provisions in section 9.3.1., either conditionally or unconditionally, in respect of any dwelling or site to which the provision of that section applies.
- 9.6.6. The Registrar of Deeds shall:

- 9.6.6.1. Make such endorsements on the title deeds of any dwelling or site and such entries in his/her registers as necessary to indicate the provisions of section 9.3.1. apply in respect of such dwelling or site.
- 9.6.6.2. Cancel any such endorsements or entries where an unconditional exemption is granted under section 9.3.5. or where satisfactory proof has been submitted that conditions imposed under section 9.3.5. have been complied with. OR
- 9.6.6.3. Make such endorsements or entries as necessary to indicate any conditions subject to which an exemption has been granted under section 9.3.5.
- 9.6.7. No transfer of any dwelling or site in respect of which section 9.3.1. applies, shall be passed to a person other than the provincial government unless the Registrar of Deeds is provided with a certificate signed by the Department, to the effect that such dwelling or site has been offered for sale to the provincial housing Department per section 9.3.1. and that the offer has been rejected or an exemption has been granted under section 9.3.5., either unconditionally or subject to the conditions set out in the certificate.

SECTION 2: PROCEDURES IN THE IDENTIFICATION/TRACING OF RIGHTFUL BENEFICIARIES

9.7. Verifying occupancy

- 9.7.1. Provinces and municipalities will be required to as the first step in the process determine whether the rightful beneficiary is in occupation of the relevant property and if not to endeavour to trace the rightful beneficiary. A verification process must thus be undertaken to determine which properties were developed through funding available under the Human Settlements Development Grant (HSDG) and the provisions of the national housing programmes that confer registered

ownership on approved beneficiaries that have not been transferred to the rightful beneficiaries.

- 9.7.2. The HSS and housing subsidy approval processes will have to be evaluated to determine:
 - 9.7.2.1. Whether the properties were officially allocated.
 - 9.7.2.2. Whom were they allocated to?
 - 9.7.2.3. Were housing subsidy application forms submitted and considered?
 - 9.7.2.4. Were subsidy applications approved and if so:
 - 9.7.2.4.1. in favour of whom; and
 - 9.7.2.4.2. was a Deed of Sale concluded, or a Deed of Grant signed and issued?
- 9.7.3. These properties will therefore still be registered in the ownership of the local municipality or the Department of Human Settlements.
- 9.7.4. It must be established whether the township establishment process has been concluded. If not, this process must be immediately attended to and concluded.
- 9.7.5. If the organ of the state concluded a Deed of Sale or a Deed of Grant was issued in favour of the rightful beneficiary, and it is verified that the beneficiary is still alive, the transfer of the property in the ownership of the rightful beneficiary must proceed even though the beneficiary may no longer be in occupation of the dwelling.
- 9.7.6. The conveyancer is to conclude the transfer of instruction of the Master upon winding down of the estate.
- 9.7.7. In cases where Deeds of Sale were not concluded and/or Deeds of Grants were not issued and it was verified that the beneficiary is alive, the next step will be to undertake occupation verification initiatives on the identified properties to determine:

- 9.7.7.1. Who is in occupation?
- 9.7.7.2. If the approved beneficiary is not in occupation, how did the current occupant come to occupy the property?
- 9.7.7.3. The profile of the occupants needs to be established, i.e., married, or single, single with financial dependants, household income, relationship to approved beneficiary, any contractual agreements concluded between occupier and approved beneficiary, duration of occupation, etc.
- 9.7.7.4. Whether the occupant is to claim the right to ownership or not.

9.8. Scenarios that may require dispute resolution

- 9.8.1. With the challenges experienced in transferring housing subsidy-financed properties to their rightful beneficiaries, the following scenarios may be encountered where the rightful beneficiary is not occupying the relevant property:
 - 9.8.1.1. The approved beneficiary may have informally “disposed” of his/her property and a third party is occupying the property.
 - 9.8.1.2. The approved beneficiary is sub-letting his/her property to a third party without approval from the Department.
 - 9.8.1.3. The approved beneficiary may never have received vacant occupation of the allocated property as the dwelling/property was invaded by a third party.
 - 9.8.1.4. The approved beneficiary passed away and family members are in occupation.
 - 9.8.1.5. The approved beneficiary passed away and a third party is occupying the property.
 - 9.8.1.6. The approved beneficiary passed away, there is no remaining spouse, and the dwelling is occupied by minor children.
 - 9.8.1.7. The approved beneficiary divorced his/her spouse, the approved beneficiary has vacated the property, and the spouse is occupying the property.

- 9.8.1.8. The marriage between the approved beneficiary and his or her spouse collapsed, the beneficiary vacated the property, and the spouse is occupying the property, but divorce proceedings have not been initiated or have not been finalised.
- 9.8.1.9. The same scenario exists as set out in paragraph 9.2.1.8., but a third party is occupying the property.
- 9.8.1.10. The beneficiary was in a cohabiting relationship and passed away and the cohabiting partner is now in occupation.
- 9.8.1.11. The beneficiary abandoned the property, and a third party took occupation, sometimes with the “approval” of councillors/Local Municipality.

9.9. Contractual commitments: Deed of Sale/Deed of Grant cases

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

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

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

9.11. Proof of an informal “sale transaction” is obtained

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

9.11.2. The following may be encountered:

The property was “sold” within the eight (8) years of sale restriction provisions:

9.11.2.1. Where documentary proof is received of a written “sale agreement” concluded between the rightful beneficiary and the claimant or third party and such a “sale transaction” was concluded within the first eight years from the date on which the Deed of Sale between the organ of the State and the rightful beneficiary was concluded and/or the date on which the Deed of Grant was issued in favour of the rightful beneficiary, a breach of contract conditions has occurred. Where the Deed of Sale and/or Deed of Grant did not make provision for the sale restriction clause, the “sale transaction” between the rightful beneficiary and the claimant was inconsistent with the provisions and intent of Section 10A of the Housing Act, Act 107 of 1997, as amended.

9.11.2.2. The Member of the Executive Council (MEC) must issue a written notice to the rightful beneficiary that a breach of contract conditions has occurred or that the property was disposed of inconsistent with the provisions of the Housing Act, Act 107 of 1997, as amended, and that the Deed of Sale/Deed of Grant is forthwith terminated.

9.11.2.3. The re-allocation of the property must now be considered, and each case must be evaluated based on the merits

thereof and the details of the informal transaction that has been concluded between the previous rightful beneficiary and the claimant to the ownership of the property. The re-allocation of the property must be subjected to the provisions of the housing subsidy scheme and the applicable housing subsidy programme.

- 9.11.2.4. Where the applicant satisfies the qualification criteria, the property can be allocated and transferred to the applicant.
- 9.11.2.5. Where the applicant does not satisfy the qualification criteria, the MEC may decide not to approve the application, follow the prescribed eviction process, and re-allocate the property to a qualifying beneficiary. Or the MEC may decide to allocate and sell the property to the occupant at input cost where the income of the occupant is less than R7000 per month and/or at market value where the income of the occupant is more than R7000 per month. All such sales must be cash sales. If the applicant satisfies the qualification criteria for the First Home Finance (FHF) subsidy programme, and can successfully apply for a mortgage loan, the MEC may approve an FHF subsidy application tendered by the applicant to be used to purchase the property. The fact that the occupant has paid a “purchase price” to the rightful beneficiary is of no concern to the organ of the State.
- 9.11.2.6. Where the occupant is the current owner of another residential property, the application must be rejected, a notice must be issued to vacate the property, and the property must be allocated to the next beneficiary in line for housing assistance. If the occupant fails to vacate the property as requested, legal action should be pursued to evict the occupant.

The property was “sold” after the lapse of the sale restriction period

- 9.11.2.7. Where documentary proof is received that a written “sale agreement” was concluded between the rightful beneficiary and the claimant or third party and such a “sale transaction” was concluded after the first eight (8) years from the date on which the Deed of Sale between the organ of the State and the rightful beneficiary was concluded and/or the date of the Deed of Grant issued in favour of the rightful beneficiary, the informal “sale transaction” could be regarded as being consistent with the sale restriction provisions. Therefore, the termination of the Deed of Sale/Deed of Grant should not be pursued under such circumstances.
- 9.11.2.8. As no breach of the Deed of Sale/Deed of Grant provisions occurred and/or the provisions of the Housing Act, Act 107 of 1997, as amended, were not contravened, the property must first and foremost be transferred to the rightful beneficiary. The subsequent transfer of the property to the “informal buyer” must be regarded as a private matter between the rightful beneficiary and the “informal buyer”. The organ of the State may thus not transfer the property to the “informal buyer” or claimant to the right to ownership of the property.
- 9.11.2.9. Where the rightful beneficiary could not be traced and he/she did not respond to the advertisements, the MEC must be approached to approve the cancellation of the Deed of Sale/Deed of Grant and a notice must be issued to the effect that the Deed of Sale/Deed of Grant is cancelled before the allocation and transfer of the property to the “informal buyer” could be considered.
- 9.11.2.10. Where the rightful beneficiary is traced and he/she demands that the property be transferred in his/her ownership, the MEC is obliged to transfer the property to the beneficiary. The occupation and/or claims that the occupant may institute should be regarded as a private matter to be resolved between the property owner and the occupant/informal purchaser.

9.11.2.11. The MEC must now be approached to obtain approval for the allocation and transfer of the property to the informal purchaser/occupant of the property. The allocation and transfer of the property must be administered on the same basis.

Proof of an alleged informal sale is not provided

9.11.2.12. Where the rightful beneficiary is alive, still legally married and/or legally divorced but not in occupation of the property and the occupant of the property claims the right to ownership to the property, but he/she failed to produce a copy of the alleged "informal Deed of Sale" concluded with the rightful beneficiary, the claim that the property was informally sold to him/her can't be verified and the transfer of the property to the rightful beneficiary must be prioritized. If the rightful beneficiary cannot be traced, the process of tracing the beneficiary must be followed before the matter can be further pursued.

9.11.2.13. Where the beneficiary does not respond to the advertisements, the MEC must be approached to approve the formal termination of the Deed of Sale/Deed of Grant. The property may then be re-allocated and transferred to the occupant if the occupant satisfies the qualification criteria. If the occupant does not satisfy the qualification criteria due to his/her previous home ownership status, he/she previously received housing assistance from the State, or the occupant's income exceeds the current income limit, the MEC must sell the property at either input cost or market value as directed.

9.11.2.14. If the rightful beneficiary is traced, he/she has the right to claim ownership of the property and if so, the property must be transferred to the rightful beneficiary. The "informal purchaser"/occupant of the property will have to institute civil

procedures through a Court of law to claim performance from the rightful beneficiary in terms of the alleged sale transaction.

9.12. Cases where no contractual commitments have been concluded other than the subsidy application approval – the obligations of the Organ of the State

9.12.1. It is reported that in most cases the allocation of housing subsidy-financed properties was not followed by the conclusion of Deeds of Sale agreements and/or the issuing of Deeds of Grant.

9.12.2. The only obligation that has been established under these circumstances is the approval of the subsidy application by the MEC. This approval of the subsidy application established a firm obligation on the State to deliver a housing product to the approved beneficiary as promised. Under the circumstances the organs of the State have complied with their obligations and the houses were constructed and allocated to beneficiaries. However, the occupation of the allocated properties by their rightful beneficiaries has not been realised in all cases. The organ of the State has also failed to transfer the properties to the rightful beneficiaries.

9.12.3. The approval of the housing subsidy application must be regarded as a firm obligation on the organ of the State to effect the transfer of ownership of the subsidy-financed property and the same processes as described in Sections 9.1.1. to 9.1.7. should be applied and followed with the exception that the requirement to cancel the Deed of Sale and/or Deed of Grant falls away.

9.12.4. Therefore, the same scenarios will be encountered, and the priority should always be to transfer the property to the rightful beneficiary. Where the property was informally sold by the beneficiary it must be noted that the rightful beneficiary was not at liberty to alienate the

property in respect of which only an allocation was approved, and no contractual commitments were realised. The property belongs to the organ of the State and the beneficiary can't dispose of the property that does not belong to him/her.

9.12.5. Where the rightful beneficiary vacated the property, the organ of the State must endeavour to trace the beneficiary and award him/her the opportunity to explain why he/she is not occupying the property and whether he/she would prefer to exercise the right to registered ownership. If confirmed and verified proof is received that the property was informally disposed of by the beneficiary and the informal purchaser claims the right to registered ownership, the MEC must establish from the rightful beneficiary why the property was sold, what amount was received as the sale price and why the property should not be transferred to claimant.

9.12.6. Where the rightful beneficiary who has informally "disposed" of the allocated subsidy-financed property claims the right to registered ownership, the matter is under dispute and the processes described in Section 9.1. must be pursued.

9.12.7. Where the rightful beneficiary cannot be traced, the same process must be followed.

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

9.13.1. If the beneficiary does not occupy the property and cannot be traced and/or no response to the notices has been received, and it is verified that the beneficiary is not deceased, an application must be made to the MEC to cancel the original allocation and to re-allocate the property.

- 9.13.2. If the beneficiary is deceased, the property must be transferred to the estate of the deceased beneficiary or as directed by the Executor of the Estate.
- 9.13.3. If approval is received for the cancellation of the allocation, the Director: of Management Information Systems in the National Department of Human Settlements must be informed of the decision and be requested to remove the allocation from the HSS and the National Human Settlements Subsidy Database (NHSDB).
- 9.13.4. The original beneficiary may now be replaced with the next approved beneficiary and/or the current occupant of the dwelling if the occupant satisfies the requirements of housing subsidy qualification criteria.
- 9.13.5. The housing subsidy application will be subject to the normal qualification criteria evaluation and deed searches.
- 9.13.6. If the current occupant does not satisfy the qualification criteria, the following may be applied:
- 9.13.6.1. If the income of the occupant exceeds the income limit of R3500 per month, but is less than R7000 pm, the property must be offered to the occupant at a price equal to the original development cost of the property (land cost, services, cost, and top structure cost). If the income of the occupant is more than R7000 pm, the property must be offered to the occupant at the market value of the property. The market value of the property must be determined based on the average of two *ad hoc* valuations from registered property assessors.
- 9.13.6.2. If the occupant is not able to pay the sale price, he/she must be advised to approach a financial institution with a home loan application and for this purpose, a Deed of Sale subject to a suspensive condition, namely that a home loan must

first be approved before the sale transaction is finalised, must be concluded with the occupant.

- 9.13.6.3. If the occupant qualifies for a FHF subsidy, the occupant must be requested to apply for a FHF subsidy and if the application is approved a certificate must be issued to a financial institution to confirm that an FHF subsidy has been approved in principle and that funds have been set aside for the subsidy, should the home loan application be approved. The normal FHF process will then apply.
- 9.13.6.4. If the occupant is found to be the owner of another property, the occupant must accordingly be informed that he/she has been disqualified from any access to housing subsidy assistance except rental housing options and that he/she must vacate the property within sixty (60) days from the date on which the notice is served.
- 9.13.6.5. If the applicant fails to vacate the property, the organ of the State must apply for an eviction order. The allocation of the dwelling may now proceed to the next approved beneficiary.

SECTION 3: BREAKDOWN IN COHABITING RELATIONSHIPS

9.14. Protection of couples in a cohabitation relationship

- 9.14.1. To protect a couple in cohabitation, their rights and obligations can be protected by entering into a cohabitation agreement. This agreement regulates the relationship during its existence and after it has come to an end.
- 9.14.2. A cohabitation agreement must be done in writing and signed by both parties in the cohabitation agreement.
- 9.14.3. The cohabitation agreement can be concluded anytime during the relationship, but it should be concluded before partners in a cohabitation agreement apply for a housing subsidy.

9.15. The cohabitation agreement

- 9.15.1. A cohabitation agreement should set out the rights and obligations of the couple and include the following:
 - 9.15.1.1. The agreement does not constitute a marriage.
 - 9.15.1.2. Aspects regarding any joint property owned or leased by the couple, such as a house and the property, must be registered in both their names.
 - 9.15.1.3. Arrangements when one of the partners in a cohabitation agreement passes on.
 - 9.15.1.4. Regulation of living expenses and which person will be responsible for what expenses.
 - 9.15.1.5. Provisions establish what property, and liabilities will be kept separate.
 - 9.15.1.6. Aspects regarding life insurance and pension funds.
 - 9.15.1.7. Maintenance, if any.
 - 9.15.1.8. Duration and end of the agreement.
- 9.15.2. The cohabitation agreement will only be enforceable between the couple to the agreement and not enforceable against third persons.
- 9.15.3. Where a dispute arises regarding the application and interpretation of the agreement, a court may be approached for assistance.

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

- 9.16.1. The registration of the property must be done in the names of both parties to the cohabiting relationship.
- 9.16.2. In cases where the relationship dissolved or one partner died or went missing, the registration of the title cannot proceed.
- 9.16.3. The existing agreement ceases to exist, and a new agreement must be entered into. It must be noted that proof must be submitted before a new agreement is entered.

- 9.16.4. In the event of a cohabitation breakdown before the subsidy is approved and after the sale agreement has been signed, the agreement of sale must be cancelled.
- 9.16.5. In the event of a cohabitation breakdown before the subsidy is approved and after the sale agreement has been signed and where there were dependants involved, the party that retains custody must enter into a new sale agreement for the property in question.
- 9.16.6. If the partnership dissolves after subsidy approval, but before registration takes place, the existing sale agreement ceases to exist.
- 9.16.7. During the subsidy application process, all cohabiting couples must provide additional documentary proof over and above the affidavit. This will serve to strengthen proof that the couple is cohabiting. The following documents must be submitted as proof with the subsidy application:
- 9.16.7.1. A signed cohabitation agreement.
 - 9.16.7.2. A joint lease agreement or bank account.
 - 9.16.7.3. Supporting affidavit from a family member or neighbour.

SECTION 4: DUPLICATE DEPENDENTS

9.17. Procedures to be followed when duplicate dependants are detected

Scenario 1: The Applicant declares that he/she was unaware of the fact that his/her financial dependants' identification particulars were used by another housing subsidy applicant who gained access to the housing subsidy

- 9.17.1. Where the identity number of a financial dependant of a housing subsidy applicant is detected on the HSS, the subsidy application will be rejected. The applicant must be informed of the reason in writing why the application has been rejected, namely that the identification particulars of one of his/her declared financial dependants have been

detected on the HSS as being registered under an alternative approved beneficiary.

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

9.17.2.1. The name of the approved beneficiary.

9.17.2.2. The date of approval of the subsidy application.

9.17.2.3. The property description of the relevant property.

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

9.17.3. The applicant must be requested to immediately report the matter to the South African Police Service (SAPS) and lay charges of perjury and fraud against the beneficiary.

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

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

beneficiary must be requested to respond to the allegations made by the applicant that such identity particulars were fraudulently used by the approved beneficiary.

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

9.17.7. If the Dispute Resolution Panel/departmental Legal Division (if applicable, State Attorney) that the approved beneficiary has fraudulently utilized the identity particulars of the financial dependants of the applicant to gain access to the benefits of housing subsidy, the application by the applicant must be reconsidered and be approved subject to the fact that the applicant must satisfy the remainder of the housing subsidy qualification criteria.

9.17.8. The Manager of HSS in the National Department of Human Settlements must be informed by the Department of Human Settlements in the Province that the rejection of the application must be corrected, and the application must be accepted.

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

9.17.10. Given the ruling by the Dispute Resolution Panel, the Provincial Human Settlements Departments must now report the fraudulent conduct of the

approved beneficiary to SAPS with all the documentary proof and the ruling by the Adjudication Panel and it must lay charges of perjury and fraud against the approved beneficiary.

9.17.11.If the approved beneficiary is found guilty of perjury and/or fraud, the MEC must be approached to approve the cancellation of the housing subsidy approval and request the Dispute Resolution Panel to deregister the transfer of ownership of the property and transfer the property back to the Provincial Department of Human Settlements.

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

9.17.13.If the approved beneficiary fails to respond on or before a date indicated in the request by the Provincial Human Settlements Department, the matter must be referred to the State Attorney for investigation and legal action as may be required.

9.17.14.If the beneficiary refuses to vacate the property on the date indicated to do so, the State Attorney must be requested to apply for an eviction order.

9.17.15.The new beneficiary of the property must accept the used property in writing.

9.17.16.If the beneficiary's claim that the financial dependants are indeed his/her legitimate dependants is sustained, no further action against the beneficiary is warranted. The application tendered by the applicant is thus fraudulent and must be rejected. The HSS records must be adjusted to indicate that the applicant endeavoured to obtain access to the benefits of housing subsidies by fraudulently claiming that he/she has financial dependents.

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

9.17.17. Where the applicant willingly provided the identity of one of his/her financial dependants to another person to allow that person to gain access to housing subsidy benefits, the applicant must be informed that he/she will no longer qualify for the allocation of subsidy financed house as a single person with financial dependents.

9.17.18. However, if the "single" status of the applicant changes, the applicant may reapply for housing assistance. This application will be regarded as a new application and will as such be recorded on the National Housing Needs Register.

9.17.19. The details of the applicant registered in the National Housing Needs Register must be adjusted to reflect that the person will not qualify for a housing subsidy as a single person with financial dependants and that an application for government-subsidised financed housing has been rejected. As soon as the applicant registers his/her need under changed status the entry into the National Housing Needs Register must be adjusted to reflect the date of registration.

9.17.20. The housing subsidy approval in respect of the beneficiary must now be cancelled. The Provincial Human Settlements Department must obtain the MEC's approval to cancel the subsidy approval and if such approval is obtained, the State Attorney must be requested to investigate the matter, take legal action and pursue the matter until deregistration and transfer of the property back to the Provincial Government (as the case may be) has been achieved.

9.17.21. The beneficiary's details must be retained on the HSS, and he/she will not be allowed to re-apply for a housing subsidy.

9.17.22. The actions described above must be preceded by properly giving notice to the beneficiary of the cancellation of the housing subsidy approval, the intended deregistration of the property and a notice to vacate the property. If the applicant acknowledges receipt the step in Scenario 1 will apply.

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

9.17.23. In this scenario, the application must be rejected and the HSS records must be adjusted to reflect that the applicant endeavoured to fraudulently obtain approval of his/her housing subsidy.

9.17.24. However, if the relevant applicant's single status changes he/she will be allowed to re-apply for a housing subsidy.

9.17.25. The MEC may decide to pursue charging the approved beneficiary based on the allegations made by the applicant or may decide not to pursue the matter further.

SECTION 5: DEREGISTRATION OF DECEASED BENEFICIARIES AND THE RE-REGISTRATION OF RIGHTFUL HEIRS

9.18. Death of an owner of immovable property

9.18.1. In terms of the Deeds Registries Act, Act 47 of 1937, as amended, the ownership of land may be conveyed by one person to another only using a deed of transfer executed or attested by the Registrar of Deeds. Immovable property may only be transferred in this manner. The owner of the property is the person whose name is registered on the title deed of the relevant property in the Deeds Office.

9.18.2. The death of an owner of immovable property terminates ownership. Ownership is only transferred to an heir after registration of the property in the name of the heir in the Deeds Office.

9.18.3. If a property has been transferred to a housing subsidy beneficiary and the title deed is in his/her possession, the rights to the property pass to the deceased estate first and then to the heirs.

9.19. Rules of intestacy, i.e., the death of a homeowner in the absence of a Will (reference must be made to the Intestate Succession Act, Act 81 of 1987, as amended)

9.19.1. If a deceased housing beneficiary left a spouse but no descendants, the surviving spouse would inherit all assets within the estate.

9.19.2. If a deceased left descendants but no spouse, the descendants would inherit the assets within the estate proportionately.

9.19.3. The deceased left both a spouse and descendants, the spouse and descendants would inherit proportionately.

9.19.4. If the deceased left no spouse or descendants, his/her parents would be next in line followed by their descendants. If they were indicated as dependants of the deceased at the time of approval.

9.19.5. Further rules apply where there is no surviving spouse, descendants, or parents. In this case, the descendants of the parents inherit, such as a brother or sister, or half-brother or half-sister.

9.19.6. If the deceased had a will in place, the Will applies, only if it is according to the Wills Act, Act 7 of 1953, as amended.

9.20. Polygamous arrangements

9.20.1. If a deceased leaves more than one spouse, the monetary value of the estate is divided by the number of children of the deceased plus the number of spouses that have survived the deceased.

9.20.2. If any of the children or spouses have died, then their share is allocated to their descendants.

9.20.3. If the deceased leaves only one spouse, the ordinary provisions of the Intestate Succession Act, Act 81 of 1987, as amended, will apply.

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

9.21.1. The deceased family or anyone close needs to report the death of the main beneficiary to the Master High Court in case an heir is a minor.

9.21.2. The Master of the High Court appoints an executor to administer the deceased estate. The executor's function is to collect the assets including property of the deceased, pay any debts and distribute the inheritance to those entitled to such inheritance.

9.21.3. Drawing up the Liquidation and Distribution Account is the next step in finalizing the estate and is normally completed once all the relevant information and/or documents and/or credit payments requested when the estate was initially reported, have been received; this account reflects all the assets and liabilities in the estate, the cash and liquidity situation, administration costs and shows how the balance will be distributed to the heirs.

9.21.4. Once this account has been completed, it is forwarded to the Master of the High Court for examination. If the Master is satisfied with the contents of the account, he/she provides us with the necessary approval.

9.21.5. Where a person is entitled to the property, the property will only be transferred to the deeds registry after the Master has approved the Liquidation and distribution account. The account must go for inspection free from objection after the Master has given the go-ahead to the transfer. This transfer is thus a delayed transfer as the transfer to heirs takes place at the end of the winding down of the deceased estate. A simple deceased estate can take at least twelve (12) months to finalize.

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

SECTION 6: DE-REGISTRATION OF MISSING AND/OR UNTRACEABLE BENEFICIARIES

9.22. Procedure for dealing with missing and or untraceable housing subsidy beneficiaries

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

9.22.1.1. Government Gazette.

9.22.1.2. Once a week, for two (2) consecutive weeks, in a newspaper circulating in the area in which the property is situated.

9.22.1.3. Municipal office.

9.22.2. If the beneficiary cannot be traced or cannot take occupation and no response to the notices is received, an application must be lodged with

the High Court for the issue of an order, in terms of Section 6 of the Deeds Registries Act, Act 47 of 1937, as amended, for the cancellation of the registration, in the name of the existing owner.

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

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

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

9.23. Procedure to be followed when the beneficiary is traced

9.23.1. In a case where a housing subsidy beneficiary comes forward after fourteen (14) days of the notice has expired, but the relevant person cannot, for reasons beyond his/her control, take occupation of the property that is registered in his/her name, the processes described in paragraph 9.22. must be followed.

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

9.24.1. Where the identity and whereabouts of a beneficiary are known but the relevant person cannot, for reasons beyond his/her control, take occupation of the property that is registered in his/her name, and an alternative property is to be allocated to such a person, the processes described in paragraph 9.22 will apply.

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

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

9.26. Financial implications of deregistration and re-registration

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

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

9.27. Effecting transfer of the subsidised house to the relevant beneficiary only after physical occupation

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

9.28. The National Housing Subsidy Database and the Housing Subsidy System

9.28.1. The deregistration of beneficiaries must be reported to the National Department of Human Settlements, with substantiating documentation, to enable the Department to effect the required changes to the HSS and National Housing Needs Register (and where applicable).

SECTION 7: DISPUTE ADJUDICATION PANEL

9.29. Dispute Adjudicating Panel

9.29.1. The MEC appoints a panel comprising one (1) Legal Director, four (4) Regional Directors (Housing Development), one (1) Policy Expert, one (1) Deputy Director HSS, and one (1) Director Subsidy Claims and Administration.

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

9.29.2.1. To consider and adjudicate claims to rights to ownership of government housing subsidy financed properties.

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

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

9.29.3. The Dispute Adjudication Panel should fulfil the following functions:

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

- 9.29.3.2. The notice must indicate the date and venue of the hearing and this notice must be given twenty-one (21) days before the hearing date.
- 9.29.4. The Dispute Adjudication Panel must also give written notice on who may attend a specific hearing namely:
 - 9.29.4.1. The claimants.
 - 9.29.4.2. An interpreter to assist the claimant if required.
 - 9.29.4.3. The ward councillor for the specific area of jurisdiction.
 - 9.29.4.4. Officials from the municipality dealing with land and housing subsidy administration.
 - 9.29.4.5. Officials from the Provincial Human Settlement Department dealing with land and housing subsidy administration.
 - 9.29.4.6. Any person who is willing to give evidence or who can provide documents to substantiate a claim.
- 9.29.5. The Dispute Adjudication Panel must ensure that every hearing is properly constituted that the proceedings are recorded, and proper minutes are kept.
- 9.29.6. The Dispute Adjudication Panel should, when the hearing is properly constituted commence the proceedings by:
 - 9.29.6.1. Explaining the powers of the Panel.
 - 9.29.6.2. The process that will apply leading up to the appeal process.
 - 9.29.6.3. The rights and obligations of the claimants as well as the persons who will give evidence at the hearing.
 - 9.29.6.4. Confirm that evidence will be given under oath.
 - 9.29.6.5. Confirm all that evidence given will be recorded and reduced to a written record of the hearing which record will have the same status as the actual evidence given. Where the written recording of the proceedings failed for whatever reason, all evidence given will have to be resubmitted at the appeal process if this is applicable.

- 9.29.6.6. Confirm that a party to the proceedings shall not have the right to cross-examine or question any other party to the dispute or a witness called by a claimant.
- 9.29.7. The Adjudication Panel should conduct hearings in the following manner:
 - 9.29.7.1. Only the Dispute Adjudication Panel members have the right to cross-examine and question witnesses and/or claimants.
 - 9.29.7.2. The Dispute Adjudication Panel may however decide to permit a party to the hearing to pose a question to a witness and or claimant.
 - 9.29.7.3. After all the evidence was presented by all the parties, the Dispute Adjudication Panel should conclude the hearing by setting a date for the delivery of a judgment on each case.
- 9.29.8. The Dispute Adjudication Panel should present a written judgement covering the following aspects to the Head of the Legal Section of the Provincial Human Settlements Department at least a week before the date set for the judgement:
 - 9.29.8.1. The property description reflected on the general plan of the township and the title deed of the property.
 - 9.29.8.2. A description of the claimants to the right to ownership of the property.
 - 9.29.8.3. The evidence given at the hearing.
 - 9.29.8.4. A view on the credibility of the evidence that was presented at the hearing.
 - 9.29.8.5. Facts that are regarded as proven.
 - 9.29.8.6. The legal position.
 - 9.29.8.7. The findings.
- 9.29.9. The Head of the Legal Section should verify that all the information as required has been presented and return the judgement to the Dispute Adjudication Panel with an indication of any shortcomings that require

attention, if applicable. This must be done within five (5) days from receipt of the judgment.

9.29.10. On the date set for the judgement, the Dispute Adjudication Panel must provide copies of the judgement to the claimants to the right to ownership of the properties.

9.29.11. The Dispute Adjudication Panel should at the commencement of the judgment proceedings confirm the process of appeal that may be opted for.

9.29.12. If, at the commencement of the judgment proceedings, a claimant wishes to withdraw the claim or an indication is given by the claimants that a settlement agreement has been concluded, the Dispute Adjudication Panel must record such withdrawal and/or settlement. The Panel should then record the settlement or withdrawal notice and the claimants must sign the notice.

9.29.13. Where a claim is withdrawn and or a settlement is reached, there will be no appeal process or option.

9.29.14. Where the claim is not withdrawn and or no settlement has been concluded, the Dispute Adjudication Panel must deliver the judgment to all present.

9.29.15. Where the claimants fail to attend a judgment on the date set for such judgment delivery, the Dispute Adjudication Panel may proceed to deliver the judgment in the absence of the claimants if it is satisfied that proper notice of the judgment was given.

SECTION 8: DISPUTE APPEAL PANEL

9.30. The Dispute Appeal Panel

- 9.30.1. The provincial Human Settlements Department should also appoint a Dispute Appeal Panel comprising three legal practitioners such as Advocates who are regarded experts in appeal procedures and processes as well as in property rights and who are or were not members of the Dispute Adjudication Panel.
- 9.30.2. The powers and functions of the Dispute Appeal Panel are:
- 9.30.2.1. To adjudicate an appeal submitted to it by a claimant against the judgment issued by the Dispute Adjudication Panel regarding the rights to ownership of a subsidy-financed property.
 - 9.30.2.2. To issue a judgment regarding the appeal that may either confirm the judgment issued by the Dispute Adjudication Panel or reject the judgment issued by the Dispute Adjudication Panel and replace such a rejected judgment with a final judgment regarding the claims to the right to ownership of the property.
- 9.30.3. The appeal procedures are:
- 9.30.3.1. An appeal against the judgment issued by a Dispute Adjudication Panel must be submitted to the Head of the Provincial Legal Section in the form of a written notice and within thirty (30) days from the date on which the Dispute Adjudication Panel has issued the judgment.
 - 9.30.3.2. The notice must contain the grounds upon which the appeal is been made plus the additional evidence to substantiate the appeal.
 - 9.30.3.3. The Head of the Provincial Legal Section should immediately notify the Dispute Appeal Panel of the appeal that was received.
 - 9.30.3.4. The Dispute Appeals Panel must now issue a notice to all affected parties- the appellant and the respondent, of the date on which a hearing will be conducted. Such a notice must be issued at least twenty-one (21) days before the date

on which the hearing will be conducted. A copy of the appeal must be provided to the respondent with the notice of the hearing.

- 9.30.3.5. The appeal hearing should follow the same process and procedures as applicable to the Adjudication Panel process with the changes required by the context.
- 9.30.3.6. The Dispute Appeal Panel must before the hearing commences confirm that the parties to the claim to the right of ownership and the appeal process may elect to apply to the High Court for a judgment on the matter.
- 9.30.3.7. An appeal hearing may proceed in the absence of the respondent if the Panel is satisfied that proper notice of the hearing date was issued.
- 9.30.3.8. In the case where the appellant fails to attend the hearing and the Panel is satisfied that proper notice of the hearing date was issued, the appeal may be scrapped by the Appeal Panel.

10. IMPLEMENTATION, AWARENESS, COMMUNICATION, AND DISSEMINATION

10.1. The Policy will be implemented by the North West Department of Human Settlements Chief Directorate for Housing Development in conjunction with applicable stakeholders and role-players.

10.2. Communication, awareness, and dissemination of the Policy will be done through the North West Department of Human Settlements Directorate for Housing Research and Policy Development in conjunction with applicable role-players.

11. MONITORING AND EVALUATION

11.1. Monitoring and evaluation of compliance with the Policy remains the most critical area to ensure effective implementation of the Policy.

11.2. The Sub-Directorate of Monitoring and Evaluation under the Chief Directorate of Housing Needs, Research, Planning, and Technical Services in the North West Department of Human Settlements will be responsible for monitoring and evaluating compliance with the Policy.

12. THE COMMENCEMENT DATE OF THE POLICY

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

13. REVIEW OF THE POLICY

This Policy will be reviewed as and when changes are effected in national legislation about Beneficiary Management.

14. APPROVAL

Policy Developer:

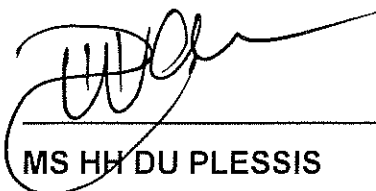


MS K MALOKA
DEPUTY DIRECTOR:
HOUSING POLICY DEVELOPMENT

14/10/2024

DATE

Recommendation:




MS H DU PLESSIS
DIRECTOR:
HOUSING RESEARCH AND
POLICY DEVELOPMENT

14/10/2024


DATE

Recommended:



MR T PHETLHU
CHIEF DIRECTOR:
HOUSING NEEDS, RESEARCH, PLANNING, AND
TECHNICAL SERVICES

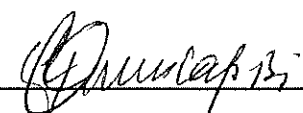
16/10/24
DATE



MS MK MAHLOBO
HEAD OF DEPARTMENT

DATE

Approval:



MEC GO MOLAPISI

16/10/2025.
DATE

15. REFERENCES

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<https://dkvg.co.za/wills-estates-and-trusts-intestate-succession-what-does-it-mean-to-die-without-a-will/>
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- 15.19. PM Attorneys. 2022. *The Wills Act 7 of 1953 in South Africa explained.*
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Use the appropriate departmental letterhead

HAPPY LETTER

Project name	
Project number	
Site number	
Developer	

1. I, the undersigned (names and surname of the approved beneficiary*), hereby declare that I accept and take possession of the above property and that the structure has been completed under the specifications stipulated in the sale agreement between myself and the seller/developer.

2. I further confirm that I understand the eight (8) year pre-emptive clause which is implemented in line with the Housing Act, Act 107 of 1997, as amended, and that as per the said clause, I will not alienate the above-mentioned property.

Signed at **on** **day of** **20**

Names of beneficiary	Identity number	Signature
Left thumbprint of the beneficiary		Right thumbprint of the beneficiary

Developer names	Signature	Date
Inspector names	Signature	Date
Municipal representative	Signature	Date

*** This Happy Letter should ONLY be signed by the approved beneficiary. Attach approval.**

