



## **human settlements**

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Department:

Human Settlements

**PROVINCE OF KWAZULU-NATAL**

# **BENEFICIARY ADMINISTRATION POLICY**

# TABLE OF CONTENT

1. Introduction .....	3
2. Problem Statement .....	3
3. Legislation/Legal framework .....	3
4. Beneficiary Administration .....	4
5. Rescission of Previous Policies .....	8
6. Effective Date .....	8
7. Monitoring and Evaluation .....	8

## **DEFINITIONS:**

**“BENEFICIARY”:** A person who qualifies for a housing subsidy or some other housing assistance measure in terms of the general rules contained in the housing code or somebody who has already received any such housing subsidy, or other housing assistance measure, as the case may be.

**“COHABITING”:** To live together as if married, either male-female or same sex usually without legal or religious sanction.

**“DECEASED BENEFICIARY”:** Refers to a particular person who has recently died.

**“MISSING BENEFICIARY”:** Is a person who has disappeared and whose status as alive or dead cannot be confirmed as his/her location is unknown.

**“POWER OF ATTORNEY”:** Is a written authority to represent or act on another's behalf in private affairs, business, or some other legal matter.

In circumstances when approved beneficiaries are either missing or deceased this creates issues of abandonment of unoccupied housing units, risk of vandalism, illegal occupation of property and delays in closing out of projects. These issues are a common occurrence and the municipality or stakeholders involved generally seek guidance on methods in dealing with these problems.

## **[2] PROBLEM STATEMENT**

The ongoing and escalating complications has prompted the Department to provide solutions to the issues as mentioned above namely; issues experienced with projects and the legal implications thereof. Thus clarity, direction and processes are required from the Department in order to resolve the said problems.

## **[3] LEGISLATION/LEGAL FRAMEWORK**

The Policy is informed by the following Legislation:

### **[3.1] SECTION 26 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA OF 1996 PROVIDES THAT:**

- (1) Everyone has the right to have access to adequate housing
- (2) The State must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of this right.

### **[3.2] SECTION 9 OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA OF 1996 PROVIDES THAT:**

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

### **[3.3] NATIONAL HOUSING ACT 107 OF 1997, REPUBLIC OF SOUTH AFRICA:**

The purpose of the Act is to provide for the facilitation of a sustainable housing process and thus outlines the general principles applicable to housing development in all spheres of government. This Act defines the functions of national, provincial and local governments in respect of housing development and regulation.

### **[3.4] LAW OF SUCCESSION AMENDMENT ACT 43 OF 1992:**

The purpose of the Act is to define or more closely define certain expressions, to regulate the formalities in the execution of wills, to provide for cases where such formalities are not complied with, to grant a court the power to declare a will to be revoked, to regulate the effect of a divorce or the annulment of a marriage on a will, to provide for the vesting of certain benefits from the testator's will in the surviving spouse or the descendants of certain persons, to further regulate the competency of certain persons to receive a benefit under a will or to be nominated as an executor and to provide for the vesting of certain benefits from an intestate estate in the surviving spouse or the descendants of certain persons; and to provide for matters connected therewith.

## [4] BENEFICIARY ADMINISTRATION

The following will address categories of beneficiary administration processes:

### [4.1] MISSING BENEFICIARIES

The following process must be undertaken to find a beneficiary where:

- The original beneficiary is alive but not in occupation of the property
- his/her location, physical address, postal address, contact number is unknown

This scenario will warrant a process of deregistration of the beneficiary process and give him/her fair notice thereof.

When the beneficiary has been approved on the housing subsidy system (HSS) and is not yet in occupation of the housing unit, not yet located and it has been confirmed that he/she is alive, then the Developer/Municipality /Implementing Agent must confirm that all possible means have been exhausted in trying to find the person.

These methods must include the following:

Methods of locating beneficiary	Proof
<ul style="list-style-type: none"> <li>• Publish a notice that indicates the intention to transfer the property to the original beneficiary.</li> </ul> <p><i>Any third party who intends to institute an ownership on or before a predetermined date. The claim must be fully motivated and supported by proof on the basis on which the claim is instituted</i></p>	<p>Newspaper Publication / Municipal Notice</p> <p>Title Deed/Formal Purchase Agreement</p>
<ul style="list-style-type: none"> <li>• Publish a notice with the beneficiary list at the municipal offices (in at least two official languages of the area) and in the local newspaper</li> </ul> <p><i>Requesting the beneficiary to make himself/herself available in order to take occupation of the property within 30 days from date of notice and publication</i></p> <p><i>Failure on the side of the approved beneficiary to respond to the notice will lead to the deregistration/cancellation of the subsidy application</i></p>	<p>Municipal Notice/Beneficiary List/Newspaper Publication</p>
<ul style="list-style-type: none"> <li>• Registered letter/hand deliver a letter to the beneficiary at their last given address</li> </ul> <p><i>Requesting the beneficiary to make himself/herself available in order to take occupation of the property within 30 days from date of the letter</i></p> <p><i>Failure on the side of the approved beneficiary to respond to the letter will lead to the deregistration/cancellation of the subsidy application</i></p>	<p>Registered Letter/ Signature and name of recipient</p>

All the above methods must be exhausted in trying to locate the beneficiary. The case must be presented to council for a resolution and support for the deregistration of beneficiaries who cannot be traced. Thereafter the relevant documentary proof together with a formal request and the council resolution must be provided to the Subsidy

Administration Directorate to deregister the property. Once deregistration takes place the property may be allocated to the next qualifying beneficiary or claimant.

**N.B** Developers are urged to obtain a Power of Attorney (Annexure A) from each beneficiary when applying for a subsidy authorising someone (such as a family member in the project area) to accept a complete housing unit by signing the happy letter/D4 certificate, should he/she not be available on completion of the housing unit. There remains a possibility that both the beneficiary and his family cannot be traced whilst the property has been transferred onto the beneficiary's name.

#### [4.2] DECEASED BENEFICIARIES

The Department is obliged to honour the contractual agreement entered into with the beneficiary including approval of the subsidy application on HSS. Prior to any of the processes being undertaken, it is compulsory that a death certificate of the beneficiary is obtained from the Department of Home Affairs.

The Departments procedure with regard to deceased beneficiaries must be followed (as outlined below). In an effort to obviate delays and problems in the event of the death of the beneficiary, the Department has prepared a Will (Annexure B) which developers must request beneficiaries to complete when applying for a subsidy. The Will also includes the appointment of a guardian in the event of the property devolving to the minor children of the beneficiary to accommodate the possibility of child headed households.

The following process will be applicable to beneficiaries who are deceased that have been approved on the HSS and/or signed a sale agreement and/or transfer has taken place:

Scenario	Process	Proof
Family members are in occupation of the housing unit after the beneficiary has passed away	<ul style="list-style-type: none"> <li>Obtain a letter of authority from the magistrates court authorizing the relative/next of kin to take care/control of the housing unit. The application must be made in the name of the estate late.</li> </ul> <p><i>All property documents must be signed by the appointed executor as per the letter of authority. The said property will devolve to the appointed heirs as per the courts direction in terms of law of succession.</i></p>	Letter of Authority
A third party is occupying the housing unit after the beneficiary has passed away	<ul style="list-style-type: none"> <li>Trace the deceased dependents either telephonically or a letter sent to their last known address or publication in the local newspaper (as per details from the power of attorney)</li> </ul> <p><i>Requesting the dependents to respond and take occupation of the housing unit within 30 days from contact.</i></p> <p><i>Dependents failure to respond within the given time period then he/she is acknowledged to have defaulted, proof thereof must be submitted to the department.</i></p> <ul style="list-style-type: none"> <li>Once all the above processes have been exhausted the relevant procedure should be undertaken to regularize the current occupant should he/she meet the relevant qualification criteria</li> </ul>	Telephone record/Letter/Newspaper Publication

<p>The beneficiary is deceased and his/her family members cannot be located or have no interest in occupying the housing unit.</p>	<ul style="list-style-type: none"> <li>Trace the deceased dependents either telephonically or a letter sent to their last known address or publication in the local newspaper (as per details from the power of attorney)</li> </ul> <p><i>Requesting the dependents to respond and take occupation of the housing unit within 30 days from contact.</i></p> <p><i>Dependents failure to respond within the given time period then he/she is acknowledged to have defaulted, proof thereof must be submitted to the department.</i></p> <p><i>Where the dependents are not willing to do so then he/she should submit an affidavit which confirms an undertaking to relinquish rights, access and occupation of the property. Should the dependents refuse to submit an affidavit then the traditional authority can submit an affidavit indicating their refusal to cooperate as well as the disinterest in occupying the said property.</i></p> <ul style="list-style-type: none"> <li>Once such efforts have been exhausted only then can the property be reallocated to the next qualifying beneficiary. If the housing unit is located within a rural area with functional tenure then all the above mentioned processes must be undertaken in consultation with the traditional authority.</li> </ul>	<p>Telephone record/Letter/Newspaper Publication/ Affidavit</p>
<p>The housing unit is occupied by minor children after the beneficiary has passed away and there is no spouse</p>	<ul style="list-style-type: none"> <li>Obtain a letter of authority from the magistrates court authorizing the relative to take care/control of the housing unit</li> </ul> <p><i>Application for the estate must be made in the name of the deceased's estate.</i></p> <p><i>All documents must be signed by the appointed guardian/person as per the nomination of guardianship (Annexure B) and the letter of authority. The said property has to devolve to the appointed heirs in terms of law of succession.</i></p>	<p>Letter of Authority</p>
<p>The cohabiting partner is now in occupation of the housing unit since the beneficiary has passed way</p>	<ul style="list-style-type: none"> <li>Obtain a letter of authority from the magistrates court authorizing the cohabiting partner or beneficiary to take care/control of the housing unit. The application must be made in the name of the estate late.</li> </ul> <p><i>All property documents must be signed by the appointed executor as per the letter of authority. The said property will devolve to the appointed heirs as per the courts direction in terms of law of succession.</i></p>	<p>Letter of authority/ Affidavit confirming cohabitation/ Supporting affidavits from neighbours/family members confirming cohabitation. Annexure C</p>

**N.B** The Municipality can sign a happy letter/D4 certificate provided that it is not a developer. In cases where it is a developer, then the provincial department should sign it. The signing of the happy letter/D4 certificate by the department is to facilitate the payment process and to fast track the close out of the project. The management of the housing units will be retained by the municipality as the developer.

It should be noted that the provisions of Intestate Succession Act 81 of 1987 as amended by Law of Succession Amendment Act 43 of 1992 must be exhausted before a respective institution can take a decision that there is no successor in title. Proof of these provisions must be submitted to the Department together with the request for signing of the happy letter/D4 certificate.

#### **[4.3] DISSOLUTION OF RELATIONSHIP (MARRIAGE/ COHABITING)**

The following process is applicable where there has been a change in the marital status of the beneficiary or the cohabiting relationship between the beneficiary and his/her partner has ended.

<b>Scenario</b>	<b>Process</b>	<b>Proof</b>
Persons who are married in community of property, the marriage has collapsed and one of the spouses is in occupation of the property but the spouse is now missing and he/she cannot be located at the last known address.	<ul style="list-style-type: none"> <li>Request supporting documents e.g. affidavit, efforts undertaken to locate missing beneficiary (newspaper advertisement, tracing agent report)</li> <li>Substituted service order as approved by the court</li> <li>Obtain copy of divorce decree</li> </ul> <p><i>Only upon finalization of the divorce can the property be transferred to awarded spouse as per the divorce decree.</i></p>	Affidavit/ substituted service order/divorce decree
The approved beneficiary has divorced his/her spouse and has vacated the property. The spouse is in occupation of the property but transfer has not taken place	<ul style="list-style-type: none"> <li>Obtain proof of the divorce from the spouse.</li> <li>Request a copy of the divorce settlement</li> </ul> <p><i>The settlement agreement will determine who should take ownership of the property.</i></p>	Divorce Decree/ Settlement agreement
Persons are in a cohabitation relationship, the sale agreement is signed and the relationship breaks down before the subsidy is approved.	<ul style="list-style-type: none"> <li>Obtain documentary proof that the cohabitation relationship has broken down e.g. Affidavit from family members. The Municipality/ Implementing Agent will cancel the sale agreement and enter into a new sale agreement with the proposed beneficiary provided that the he/she meets all the qualification criteria and must take into consideration the residence of the minors of this relationship.</li> </ul>	Affidavit/s confirming breakdown of relationship

<p>Persons are in a cohabitation relationship, the subsidy is approved and the relationship breaks down before the property is registered.</p>	<ul style="list-style-type: none"> <li>Obtain documentary proof that the cohabitation relationship has broken down e.g. Affidavit from family members. The Municipality/ Implementing Agent will cancel the sale agreement and enter into a new sale agreement with the proposed beneficiary provided that the he/she meets all the qualification criteria and must take into consideration the residence of the minors of this relationship.</li> </ul>	<p>Affidavit/s confirming breakdown of relationship</p>
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***N.B** The Municipalities/Developers are urged upon application of the subsidy to request cohabiting partners to draft affidavits (Annexure C) that confirm that the parties are entering into this union and further stipulate how the property should devolve in circumstances were the parties separate or pass away.*

#### **[5] RESCISSION OF PREVIOUS POLICIES**

This policy will supersede all other policies and processes therein in respect of missing and deceased beneficiaries.

#### **[6] EFFECTIVE DATE**

The effective date of this policy guideline will be the date of signature by the MEC.

#### **[7] MONITORING AND EVALUATION**

The Department's Product Development Directorate with the support from the Project Management Directorate and Subsidy Administration Directorate will undertake the monitoring and evaluation of this policy and will review the policy guideline after three years from the date of approval.