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JOINT OWNERSHIP : POLICY DOCUMENT

1 Introduction

- 1.1 It has become increasingly difficult for developers to deliver an adequate top-structure given the limited subsidy available, high levels of services required by municipalities and the norms and standards relating to top-structures which have been laid down by the National Department of Housing.
- 1.2 Certain developers and others have therefore been seeking alternatives to traditional modes of delivery and one such alternative has been the delivery to beneficiaries of joint ownership rather than individual ownership.
- 1.3 The concept of joint ownership must be distinguished from the situation where several beneficiaries' top-structures are constructed along-side each other in order to save costs by the use of some common walls.
- 1.4 In the case of joint ownership, more than one beneficiary receives an undivided share in a single property.
- 1.5 Whilst joint ownership appears to offer immediate solutions to some of the difficulties identified above, there are several serious problems associated with the use of this concept.

2 Problems

- 2.1 No specific legislation exists with regard to the use of this concept in a situation such as a housing project. Whilst joint ownership is a common law concept which has long been in existence, and although the Deeds Registries Act, 47 of 1937, allows, in terms of section 23 thereof, for land to be held by two or more persons in undivided shares, there is no specific legislation governing the relationship between such persons.
- 2.2 Clearly, the Sectional Titles Act, 95 of 1986 and the Share Blocks Control Act, 59 of 1980 are not appropriate for the situation envisaged. Although they do deal with joint ownership, they were never intended to be implemented in large scale housing projects. Apart from the fact that they are relatively complicated legislation, they are both expensive to implement.

- 2.3 Although it is possible to insert title deed conditions that reduce the rights of ownership, it is not possible to impose positive obligations on the title holder. Personal conditions which are in the negative can be imposed.
- 2.4 Various concerns arise with regard to problems which will manifest themselves over time and after the development is concluded.
- 2.5 Each beneficiary only has an undivided share in the property. It is therefore not possible for a beneficiary to extend his or her share of the top-structure without the consent of other joint owners.
- 2.6 Unless the matter is dealt with contractually, joint owners, in terms of the common law, are entitled to have access to the entire property. This can cause obvious problems in a residential situation.
- 2.7 Unless all of the joint owners participate in an application for bond finance and bind themselves to settling any loan advanced by a financial institution, it will not be possible to obtain bond finance over the property, which reduces the ability of the joint owners individually to improve the section of the property over which they have the right of use.
- 2.8 A joint owner is likely to find it difficult to sell his or her undivided share in a property.
- 2.9 On the death of any joint owner, problems could be experienced if more than one person inherits the undivided share in the property.
- 2.10 Rates will be levied against the property and the joint owners will therefore be jointly and severally liable for the payment of those rates. If one joint owner does not pay, this prejudices the position of his or her fellow joint owners.
- 2.11 In terms of section 26(2) of the Constitution of the Republic of South Africa, Act 108 of 1996, "the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of [the right to have access to adequate housing]". If joint ownership is allowed, it is unlikely that the owners will be able to achieve the progressive realisation of the right to housing envisaged in terms of the Constitution. They will be unable to individually improve the property or undivided share in the property they have acquired. The undivided share can therefore realistically only be regarded as an initial venture into the housing market, but given the difficulty the joint owner is likely to have in selling his or her undivided share, he or she will probably be unable to use that as a stepping stone to better housing opportunities.
- 2.12 This would also be contrary to the incremental policy laid down previously by the Department of Housing.
- 2.13 Whilst joint housing therefore appears to offer short term solutions to the difficulties associated with the delivery of adequate top-structures, serious long term problems are envisaged which will be both costly and difficult to rectify at a later stage.
- 2.14 It must be accepted that the mere insertion of title deed conditions and stipulation of contractual conditions to deal with the consequences of joint ownership are unlikely to resolve all problems associated with this concept and

in the medium and long term, there is every possibility that they will simply be ignored. This is particularly so given the fact that rights in land are often transferred informally without reference to the Deeds Office.

- 2.15 It should always be possible therefore for the property to be sub-divided in the event of a dispute arising between joint owners. This therefore means that the use of combo units is generally unacceptable.

3 Use of joint ownership

- 3.1 Notwithstanding the difficulties and problems associated with joint ownership which have been identified above, several important advantages can be achieved by the use of this concept in appropriate circumstances:

3.1.1 Although more than one subsidy will be used on the top-structures, certain improvements or facilities which are normally constructed on each individual erf will not be necessary. For example, only one toilet may be required which will clearly result in a savings in cost.

3.1.2 There will be a reduced land cost per subsidy since only one site is being purchased for more than one beneficiary.

3.1.3 The cost of servicing the site will be reduced in comparison with the cost of servicing the sites of each individual owner.

3.1.4 The savings which can be derived as a result of the use of joint ownership can be passed on to the beneficiaries of the project which will enable the funds to be spread further and ensure that beneficiaries receive a top-structure which is both larger and of better quality.

3.2 The PHDB is of the view therefore that where a nuclear family wishes to reside together and share one property, and provided the beneficiaries understand the disadvantages associated with joint ownership, this concept may be used in such circumstances. However, at all times, it must be clear that the legal difficulties and problems associated with this concept have been adequately addressed and that the beneficiaries receive value for money. Notwithstanding the fact that the beneficiaries are related, it should also always be possible for the property to be sub-divided in the event of a dispute arising between the beneficiaries.

3.3 If sub-division is to be a realistic possibility, then each beneficiary must have his or her own facilities. The land on which the top-structures are situated can therefore be held in joint ownership but each beneficiary should have a separate top-structure with his or her own facilities. It is accepted that in certain instances, it will be appropriate for the top-structures to share common walls.

4 Policy

4.1 In general, the use of joint ownership is inappropriate for low income housing developments funded by PHDB subsidies.

4.2 It may be possible to use joint ownership where nuclear families desire it

provided that the PHDB is satisfied on the following issues:

- 4.2.1 The support of the municipality to the use of joint ownership must be confirmed. It is extremely likely that some problems will arise as a result of the use of this concept and in that event, the municipality having jurisdiction over the project area is likely to be drawn into the resolution of the problem.
- 4.2.2 Each beneficiary of the nuclear family must be eligible for a subsidy.
- 4.2.3 Each beneficiary must have the right of use of a separate top-structure with its own facilities, even if there are some common dividing walls.
- 4.2.4 The property held under joint ownership must be capable of sub-division in the event of a dispute arising between the joint owners. The municipality must consent to the possible sub-division of the property before a project is approved.
- 4.2.5 The contractual arrangements to cater for the relationships between beneficiaries must be acceptable to the PHDB.
- 4.2.6 Title deed conditions acceptable to the PHDB must be determined and where possible, these should be reflected on the general plan for the project area.
- 4.2.7 The benefits which arise through the reduced costs associated with the use of joint ownership must be passed onto the beneficiaries of the project.
- 4.2.8 The beneficiaries must make an informed decision and the developer must demonstrate that they have been properly advised on the advantages and disadvantages associated with the concept of joint ownership.
- 4.2.9 In all situations, the PHDB will have a discretion with regard to the use of the concept of joint ownership for low income housing projects.

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