



KZN Human Settlements

uMnyango wezokuhlaliswa komphakathi
ISIFUNDAZWE SAKWAZULU-NATALI

HOUSING POLICY COMMUNIQUÉ

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INDEX

MISSING AND DECEASED BENEFICIARIES

PAGE 3

FARM RESIDENT SUBSIDY PROGRAMME

PAGE 7

MISSING AND DECEASED BENEFICIARIES

The department receives frequent enquiries related to missing and deceased beneficiaries. As a result these policies are being communicated again to raise awareness of the existence of these processes to address related problems that are being experienced. Whereas these are the current guidelines, these are still applicable. However, readers are encouraged to submit challenges and suggestions in writing to the office of the Manager: Product Development, KZN Human Settlements, via the following e-mail address: martie.milne@kznhousing.gov.za; or nokulunga.simelane@kznhousing.gov.za; or fax: 0333926482

1. POLICY ON MISSING BENEFICIARIES

The Policy on Missing Beneficiaries outlines the process that must be followed in cases where beneficiaries have gone astray and cannot sign the D4 certificates. The policy can be applied in the following two scenarios:-

1.1 SCENARIO 1

When a beneficiary has concluded a sale agreement with the Developer/Municipality but the transfer has not taken place. This beneficiary has been approved and entered on the National Housing Database but is now missing. The Developer/Municipality must try to locate the beneficiary or his/her family at the last given address allowing the beneficiary a period of thirty (30) days to respond. Should the beneficiary not respond within the given period then, he/she is in breach of contract since he/she has not taken transfer of the property. The sale can therefore be cancelled and the property reallocated. The missing beneficiary's name must then be removed from the National Housing Database since he/ she did not receive the subsidy and replaced by the new beneficiary.

1.2 SCENARIO 2

When a subsidy has been approved and the beneficiary has taken transfer of the property but the Developer/Municipality cannot find him/her to sign the D4 certificate. In this case the Developer/Municipality must try to locate the beneficiary or his/her family at the last given address allowing the beneficiary a period of thirty (30) days to respond. The Developer/Municipality must also place a notice in the local newspapers requesting the beneficiary to take occupation of the property within a period of thirty (30) days. Should the beneficiary not respond within the given period, the Developer/Municipality can furnish an affidavit indicating that all reasonable and necessary steps have been taken to locate the beneficiary. The affidavit should also declare that a notice was placed in the local newspapers and a copy of the notice should be attached. This affidavit will then be accepted in place of the D4 certificate for purposes of the P5 payment.

A suggestion to developers is to obtain a Power of Attorney from each beneficiary when applying for a subsidy authorising someone else (such as a family member in the project area) to accept the completed house by signing the D4 certificate, should he/she not be available on completion of the house. There remains the possibility that both the beneficiary and his family cannot be

traced whilst the property has been transferred into that beneficiary's name. Such situation implies that an empty house will be exposed to vandalism.

It is proposed that once the developer has followed the procedure as spelt out in scenario 2 the completed house be handed over to the municipality who can temporarily allocate the house to another potential beneficiary. The municipality must then follow the due legal process for de-registration or expropriation. *An example of a Power of Attorney is attached as Annexure A.*

1.3 TRANSFER OF PROPERTY BY A MUNICIPALITY WHERE A BENEFICIARY CANNOT BE FOUND

The policy for the Transfer of Property by a Municipality where a Beneficiary cannot be Found was approved by the MEC on the 15th October 2001. It can be applied when the beneficiary cannot be located after the transfer of the property to him/her has been effected, and the developer has complied with the policy on missing beneficiaries:

- The department advises the municipality of the situation and the municipality accordingly takes charge of the property.
- The municipality rents the house out at a reasonable rental.
- The municipality retains from the rental the rates and a reasonable maintenance fee, and pays the balance into the Guardian's Fund at the Master of the High Court to be held in trust for the owner.
- The municipality maintains the house for the period the house is under its control.
- The income from the sale must be paid into the owners trust account in the Guardian's Fund at the Master of the High Court.
- The municipality reports to the department on the status of these properties on a quarterly basis.

2. PROCEDURE ON DECEASED BENEFICIARIES

The Department has a procedure to deal with deceased beneficiaries in terms of the different scenarios that could occur. The procedure that is generally followed is to wind up the estate and appoint an executor. This process can be time-consuming. In an effort to obviate delays and problems in the event of the death of the beneficiary, the Department has prepared a Will 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 Will, attached as Annexure B, is made only in respect of the subsidised property in question and allows for the property to be disposed of in shares.

The Procedure on Deceased Beneficiaries will apply as follows:

- If a sale agreement has been concluded with a beneficiary but the beneficiary's application for a subsidy has not been approved, then the sale should be cancelled and the site reallocated. The sale agreement is suspensive upon the approval of the subsidy application. The site may well be reallocated to another family member but essentially, in these cases, the sales administration process commences afresh.

- If a sale agreement has been concluded and the deceased beneficiary's application for a subsidy has been approved, and an executor of the deceased's estate has been appointed, then the property can be transferred into the name of the deceased estate and the executor will sign all other necessary documentation. If the estate is wound up prior to transfer, then the property can obviously be transferred to the heirs of the beneficiary.
- If a sale agreement has been concluded and the deceased beneficiary's subsidy application has been approved, but there is no executor, then the developer must use his best endeavours to contact the dependants. If the deceased beneficiary's spouse or other dependant is over the age of 18 years, then the beneficiary should be replaced and the process continued thereafter.
- If a sale agreement has been concluded and the subsidy application has been approved, and there is no executor and no dependant over the age of 18 years, then the developer should attempt to contact the dependants in order to arrange for the death to be reported and an executor appointed. The executor can then sign all further documentation and the site can be transferred into the name of the estate or the heirs if the estate is finalised. If however, there is no dependant over the age of 18 years and the dependant cannot be located or, alternatively, do not co-operate with regard to the reporting of the death of the beneficiary, then the site should be reallocated. Clearly, this will be easier to do in the case of a greenfields project. In the case of an in situ upgrade, it would appear to be preferable to take steps to report the death so that an executor can be appointed.

2.1 Procedure on Deceased Beneficiaries: Insitu Upgrade Projects

The following scenario will apply in the case of Insitu Upgrade Projects.

Where a sale agreement has been concluded with the beneficiary but the beneficiary application for a subsidy has not been approved, the procedure provided that the sale be cancelled and the site re-allocated to another family member. In order to expedite the matter, when a beneficiary passes away and has not left a will where the sale agreement has been concluded but the subsidy is not approved and transferred, the property may be transferred directly to the beneficiary's spouse or co-habiting partner.

In the absence of a spouse or co-habiting partner, the property may be transferred in equal shares to the children. It may not be necessary to cancel the sale and re-allocate the property. The beneficiary can nominate an executor, heirs and a guardian, upon allocation of the subsidised property to obviate delays associated with deceased beneficiaries by completing the attached Will.

2.2 Deceased Beneficiaries and the Consolidation Subsidy

One of the eligibility criteria for the Consolidation Subsidy Scheme is that the beneficiary must have registered title to the property for which the subsidy is applied, therefore it is imperative to indicate that the Consolidation Subsidy is not transferable nor can be claimed as part of the deceased estate in the event where the Consolidation Subsidy was approved but not used.

However, in the event that the Consolidation Subsidy was approved and top structure constructed, and the applicant demise prior to his/her signing a happy letter, such subsidy will accrue to the deceased estate and as such must be administered under the provisions of the Administration of the Estates Act, Act 66 of 1965. If the total value of the estate (property) is below R125 000.00 it would be administered in terms of Section 18 of the Administration of Estates Act 66 of 1965.

The Section procedure is not time consuming and is also not costly. Furthermore, the Master can, in terms of Section 18 (3) of the Administration of Estates Act, exercise his discretion as to the manner in which any such estate can be liquidated and distributed.

2.3 Signing of the “happy letter”

The National Department of Housing has advised that the municipality can sign a happy letter provided that it is not a developer, but in case where it is a developer, the Department of Housing at a provincial level should sign it. It should be noted that the provisions of the Intestate Succession Act, Act 81 of 1987 as amended by Law of Succession Amendment Act, Act 43 of 1992 must be exhausted before a respective institution can take a decision that there is no successor in title. Proof of the process followed to exhaust these provisions must be submitted to the Department together with the request for the signing of the “happy letter”.

The Policy on Missing Beneficiaries and the Procedure on Deceased Beneficiaries may be accessed on the Department’s website at www.kznhousing.gov.za .

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FARM RESIDENT SUBSIDY PROGRAMME

The Comprehensive Plan for the Creation of Sustainable Human Settlements approved in September 2004, specifically called for a stronger rural housing development focus. This is to be achieved through:

- The economic, social and institutional sustainability of farm worker settlements; and
- The strengthening of the required institutional framework, the definition of the roles and responsibilities of implementing agents, the introduction of minimum norms and standards and secure tenure options, the introduction of suitable capital assistance mechanisms and legislative adjustments where required.

This Housing Assistance Programme (Farm Resident Subsidy Programme) has been developed with these principles in mind. It aims to provide a flexible mechanism which promotes access to adequate housing, including basic services (as an option of last resort) and secure tenure to farm workers and residents in a variety of farming situations. In addition the programme aims to provide housing solutions on a project basis for registered labour tenants. The programme aims to promote the development of sustainable human settlements through.

- A flexible approach to cater for the variety of farm resident housing needs;
- The provision of secure tenure to farm workers;
- The promotion of healthy and safe living environments;
- The empowerment of farm residents (and in particular woman) to participate in the provision of their own housing needs, as appropriate in the particular farming situation;
- Where possible, promoting access to social and economic amenities
- Promoting access to economic opportunities not related to farming (particularly when seasonal farm work is not available) for households where appropriate;
- The encouragement of sustainable spatial settlement patterns and discouraging the development of farm residents housing that places an additional service delivery burden on municipalities;
- The use of local labour and the development of skills in both developing and maintaining farm resident settlements; and
- The upgrading of existing farm resident housing and improving tenure security where feasible and practicable.

The nature of farming activities varies across the country therefore a number of factors would have to be taken into consideration when deciding on the most suitable model that will meet the needs of farm workers as well as the local requirements. This programme can be used in the following scenarios.

- **Intensive (high yield) farming.** This is characterised by fruit, vegetable, wine or chicken farming, and is typically practiced on relatively small farming units. It is labour intensive (especially during cropping season) and settlement patterns are often relatively dense. In such cases it is preferable to house workers in sustainable settlements (such as the nearest town) within a convenient travelling distance of work opportunities. This has the advantage of workers having access to social and economic amenities within such settlements. Seasonal farm workers have access to employment opportunities and children have access to schools and households to clinics, recreational facilities etc.

In this instance any of the existing subsidy instruments which provide ownership or rental accommodation can be pursued.

- **Extensive farming areas.** This is characterized by large farms a few thousand hectares in extent. These farms are usually separated from the nearest town by long distances. Farming activities are usually cattle or game ranching, the labour force is small and it is impractical to house them in the nearest settlement (which will usually be outside a convenient commuting distance). In this scenario it would be more appropriate to house the limited number of workers on the farms. Tenure arrangements can be by way or rental accommodation or if it is desirable and feasible by way of sub-division of a part of the farm and transfer of property rights. (e. g. shareblock, long term leasehold, freehold) to the workers concerned. When considering the ownership option cognisance must be taken of the capacity of the municipality to provide social services to the settlement, is the employment permanent, what will happen to workers if the employment came to an end and they no longer wanted to reside in the area. Hence, the sub-division and ownership model must be exercised with circumspection.

It must be noted that some areas may fall between the abovementioned scenarios therefore solutions may be taken from both the above two scenarios, depending on the local circumstances.

Many subsistence farmers reside on land in communal tenure in which case housing assistance is rendered through the National Housing Programme: Rural Housing: Informal Land Rights.

The National Housing Programme for Residents is aligned with the Land Reform: Labour Tenant Programme, providing a holistic solution to address the housing and developmental needs of labour tenants targeted by the Land Reform Programme.

The following implementation issues should be noted:

The National Department has not yet released the guidelines or application packs. In this regard, it is suggested that the current project linked application format be used where freehold title is envisaged, whilst the application pack for institutional subsidies may be used for rental types.

The Product Development Component of the Provincial Department is working with the Regions on a pilot project that would assist and inform any adjustments required in terms of the generic project processes and application packs.

The policy on the Farm Resident Subsidy Programme is available from the Product Development Directorate on 031 336 5363/5366.

-----**END**-----

ANNEXURE A

POWER OF ATTORNEY

I.....

Identity Number

Owner of Site Number:

.....

Signature

.....

Date

Hereby grant Power of Attorney to:

Name:

Identity Number:

.....

Signature

To sign both the Practical Completion and Handover Certificate “Happy Letter” and the retention Certificate in respect of the house to be built on the site.

ANNEXURE B

WILL/DECLARATION

I the undersigned,

Name: _____ ID. No.: _____

Declare this to be my last will and testament with regard to, Erf _____.

1. REVOCATION OF PREVIOUS WILL

I revoke all former wills or other testamentary dispositions heretofore made by me jointly and individually with regard to Erf _____.

2. APPOINTMENT OF EXECUTOR

I appoint as the Executor of the will:

Name : _____ ID. No.: _____

Address : _____

_____ Telephone No.: _____

3. APPOINTMENT OF GUARDIAN

I appoint as Guardian of my minor dependants :

Name : _____ ID. No.: _____

Address : _____

_____ Telephone No.: _____

4. POWERS OF DISPOSAL AND LIQUIDATION

My Executor may in his/her sole discretion sell or realize my property, Erf _____, at a price and at a time and in a manner as he/she may deem fit provided that he/she shall always endeavour to act in the interests of my estate and heirs.

5. APPOINTMENT OF HEIRS

I bequeath Erf _____ to ,

1) Name : _____ ID. No.: _____
Percentage of share _____

2) Name : _____ ID. No.: _____
Percentage of share _____

3) Name : _____ ID. No.: _____
Percentage of share _____

TESTATOR'S SIGNATURE/ RIGHT HAND THUMB PRINT

ID. NO. OF TESTATOR

AS WITNESSES:

1. _____

2. _____

Thus signed and sworn to at _____ on this _____ day of _____ 20____, the testator having acknowledged that s/he knows and understands the contents of this will/declaration, and further, that s/he has no objection to taking the prescribed oath which is binding on his/her conscience.

BEFORE ME :

COMMISSIONER OF OATHS

INCWADI YOKWABA IFA

Mina osayine ngezansi,

Igama: _____ Inombolo kamazisi: _____

Ngibeka lokhu njengcwadi yami yokwaba ifa yokucina ngokuqondene neSiza unombolo _____

1. UKUHOXISA INCWADI YOKWABA IFA EYEDLULE

Ngihoxisa zonke izincwadi zokwaba ifa ezingaphambi kwalena engizenze ngokuhlanganyela nengizenze ngokwahlukana ngokuqondene neSiza unombolo _____

2. UKUQOKWA KOMABI WEFA

Ngiqoka njengoMabi wefa:

Igama: _____ Inombolo kamazisi: _____

Ikheli: _____

Inombolo yocingo: _____

3. UKUQOKWA KOMBHEKI

Ngiqoka njengoMbheki wezingane zami ezisengaphansi kwesandla sami:

Igama: _____ Inombolo kamazisi: _____

Ikheli: _____

Inombolo yocingo: _____

4. AMANDLA OKUTHENGISA NOKUHLAKAZA IMPAHLA

Umabi wami wefa ngokubona kwakhe angayidayisa impahla yami eyiSiza unombolo _____ ngenani nangesikhathi kanye nangendlela ayibona ifanele inqobo nje uma kulokho azokwenza eyozama ngaso sonke isikhathi ukuthi kubhekeleke izidingo zefa lami kanye nezindlalifa zami.

5. UKUQOKWA KWEZINDLALIFA

Ngishiya iSiza unombolo _____ kulaba,

1) Igama: _____ Inombolo kamazisi: _____
Amaphesenti azowathola _____

2) Igama: _____ Inombolo kamazisi: _____
Amaphesenti azowathola _____

3) Igama: _____ Inombolo kamazisi: _____
Amaphesenti azowathola _____

ISIGINESHA YOMUNTU OWABA IFA/

ISITHUPHA SANGAKWESOKUDLA

OFAKAZI

1. _____

2. _____

INOMBOLO KAMAZISI

Isayinwe yafungelwa e _____ ngomhla ka _____ ku _____ 20 _____, umninifa uyavuma ukuthi uyakwazi futhi uyakuqonda okuqukethwe yincwadi yokwaba ifa. Akaphikisani nokwenza isifungo esimisiwe nesimbophezela kunembeza wakhe.

PHAMBI KWAMI :

UMFUNGISI