



human settlements

Department:
Human Settlements
PROVINCE OF KWAZULU-NATAL

POLICY PROCEDURE ON THE BREAKDOWN OF THE COHABITATION RELATIONSHIP

1. INTRODUCTION

There is no statute in South Africa that regulates cohabitation or addresses the consequences of its breakdown. Victims of such relationship have no legal redress in cases where this relationship collapses. The provincial Department of Human Settlements has the obligation to ensure that all government property is safeguarded and allocated in a rational manner. In instances where a breakdown occurs, the Department of Human Settlements has to ensure that a justified allocation of property is done for the benefit of all concerned.

2. BACKGROUND

The South African Constitution, Act 108 of 1996 is the supreme law of the country and therefore has a fundamental impact on Housing Policy, particularly in terms of the principle of housing as a basic human right. Section 26 of the South African Constitution, Act 108 of 1996 asserts that all South Africans have the right to have access to adequate housing. This principle provides for all South Africans including people who habitually cohabit to be eligible for housing subsidy provided they meet all the other requirements.

The National Housing Code, 2009 provides for a person who habitually cohabits with another to be eligible for a housing subsidy, however it does not provide guidance on how this should be managed. It has been found that a breakdown is more prevalent in cohabiting relationships than in the formal union of marriages. Unlike the formal marriage there is no due legal process when cohabiting couples separate. The separation poses a problem in the allocation of property.

The Provincial Procedure on the breakdown of cohabitation relationship was approved by the then MEC for Housing in May 2000. This procedure was developed to assist and guide developers in cases where a breakdown occurs in a cohabitation relationship whilst ensuring that government financed property is safe guarded and allocated appropriately.

It is required that all departmental policy procedures are constantly reviewed to address any shortcoming that may arise during implementation. This policy procedure has never been reviewed since its approval in 2000.

3. OBJECTIVE FOR POLICY REVIEW

The policy review process seeks to accomplish the following objectives:

- Identify any policy gaps within the current policy procedure.
- Ensure that the policy procedure is still able to meet the needs of the targeted group (cohabiting couples).
- Align the current policy procedure to the current departmental policies and legislation.

4. ENHANCEMENTS TO THE POLICY PROCEDURE

The Policy Procedure on the Breakdown of Cohabitation Relationship is enhanced to include the following:

- 4.1 The registration of the property must be done in the names of both parties to the co-habiting relationship.
- 4.2 In cases where the relationship has dissolved or one partner has died or gone missing, the registration of the title cannot be proceeded with.
- 4.3 The existing sale agreement ceases to exist and a new agreement must be entered into. It must be noted that proof must be submitted prior to a new sales agreement being entered into.
- 4.4 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. The developer must then find an alternative buyer.
- 4.5 In the event of a cohabitation breakdown before the subsidy is approved and after the sale agreement has been signed and where there were dependents involved, the party that retains custody must enter into a new sale agreement for the property in question.
- 4.6 If the partnership dissolves after subsidy approval, but before registration takes place, the existing sale agreement ceases to exist.
- 4.7 In the event of a sale being successfully concluded, registration of the property has taken place and all monies paid out, then the Department or the developer has no further role to play. The matter is treated as private and can only be resolved by the court of law.
- 4.8 During the application process, all co-habiting couples must provide additional documentary proof over and above the affidavit. This will serve to strengthen proof that the couple is in fact cohabiting. The following documents must be submitted as proof.

(a) a joint lease agreement or bank account

(b) supporting affidavit from a family member or neighbour

5. POLICY PROCEDURE ON THE BREAKDOWN OF THE COHABITATION RELATIONSHIP

- The subsidy application is completed and submitted with all the supporting documents
- The subsidy is approved based on the qualification criteria
- If the sale agreement is signed and the relationship breaks down before the subsidy is approved. Documentary proof thereof must be submitted. The sale agreement will be cancelled and a new sale agreement will be entered into provided that the applicant meets all the qualification criteria.
- If the subsidy is approved and the relationship breaks down before the property is registered. Documentary proof thereof must be submitted. The subsidy application will be cancelled and a new sale agreement will be entered into provided that the applicant meets all the qualification criteria.
- If the subsidy is approved, and the registration of the property is finalized and all monies paid out the developer/department has no further role to play. The matter is treated as private and can only be resolved by a court of law.
- The policy on the delinking of the beneficiary from the subsidy must be applied. This means that the registration of the property must take place after the house has been constructed. The implementation of the policy will alleviate problems that may arise if a breakdown in the relationship occurs.
- Application for special provision to be made to the MEC