



human settlements

Department:
Human Settlements
PROVINCE OF KWAZULU-NATAL

Policy Communiqué

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BENEFICIARY ADMINISTRATION POLICY

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BENEFICIARY ADMINISTRATION POLICY

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. The ongoing and escalating complications are a common occurrence and this has prompted the Department to provide solutions to these issues experienced with projects and the legal implications thereof.

The Beneficiary Administration Policy was approved by the MEC with effect from 7th August 2020. The policy includes content that is applicable to missing and deceased beneficiaries as well as aspects related to the dissolution of a relationship and supersedes all other policies and processes in respect of missing and deceased beneficiaries.

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"> • Publish a notice that indicates the intention to transfer the property to the original beneficiary. <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"> • 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 <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"> • Registered letter/hand deliver a letter to the beneficiary at their last given address <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.

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"> 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. <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"> 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) <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"> 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 	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"> 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) <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"> 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. 	<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"> Obtain a letter of authority from the magistrates court authorizing the relative to take care/control of the housing unit <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"> 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. <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.

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.

Scenario	Process	Proof
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"> Request supporting documents e.g. affidavit, efforts undertaken to locate missing beneficiary (newspaper advertisement, tracing agent report) Substituted service order as approved by the court Obtain copy of divorce decree <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"> Obtain proof of the divorce from the spouse. Request a copy of the divorce settlement <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"> 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. 	Affidavit/s confirming breakdown of relationship
Persons are in a cohabitation relationship, the subsidy is approved and the relationship breaks down before the property is registered.	<ul style="list-style-type: none"> 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. 	Affidavit/s confirming breakdown of relationship

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.*

The detailed Policy can be accessed on the Department's website using the following link:
<https://www.kzndhs.gov.za/index.php/features/policy-documents/provincial-policies>

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

ANNEXURE C

AFFIDAVIT IN RESPECT OF COHABITATION RELATIONSHIP/PARTNERSHIP

I _____
ID Number: _____
Residential address _____
Work address _____
Tel: (w) _____ (h) _____ (cell) _____

Hereby wish to confirm that I am in a cohabitation relationship with _____
ID number _____ for the past _____ months/years

I am an unmarried party to a cohabiting partnership that is intended to be permanent, excludes any other person and involves cohabitation, an obligation of mutual emotional and financial support between my cohabiting partner and myself.

I specifically acknowledge and declare that my cohabitation partner and I:

Are both older than 18 years old

Share a close personal relationship

Are responsible for each other's welfare

Share the same regular and permanent residence, with the current intent to continue doing so indefinitely

I am familiar with, and understand the contents of this declaration. I have no objection/have objection to taking the prescribed oath. I consider the prescribed oath as binding to my conscience.

Place: _____

Date: _____

Time: _____

Signature: _____

I certify that the above statement was taken from me and that the deponent has acknowledged that he/she knows and understands the contents of the statement. The statement was sworn to/affirmed before me and deponents signature/mark/thumb print was placed thereon in my presence.

Commissioner of Oaths (Signature)

Full Name: _____

Capacity: _____

Place: _____

Date: _____