



**KWAZULU-NATAL PROVINCE**

**HUMAN SETTLEMENTS**  
REPUBLIC OF SOUTH AFRICA

# Policy Communiqué

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# INDEX

<b>GUIDELINE FOR THE MANAGEMENT OF RENTAL HOUSING STOCK .....</b>	<b>3</b>
<b>REVISED GUIDELINES FOR PROJECT APPROVAL AND NHBRC ENROLMENT PROCEDURE .....</b>	<b>9</b>

# GUIDELINE FOR THE MANAGEMENT OF RENTAL HOUSING STOCK

The Guideline for the Management of Rental Housing Stock was approved by the Honourable MEC for Human Settlements for implementation with effect from 02 February 2023.

The rental housing programmes have two primary objectives. Firstly, to contribute to the national priority of restructuring South African society in order to address structural, economic, social and spatial dysfunctionalities thereby contributing to Government's vision of an economically empowered, nonracial, and integrated society living in sustainable human settlements. Secondly, to improve and contribute to the overall functioning of the housing sector and to contribute to widening the range of housing options available to the lower to middle income earners.

## 1. OBJECTIVES

The objective of this guideline is to:

- a) Ensure transparency and uniformity in terms of the compilation and implementation of lease agreements as well as the standardizing of such agreements.
- b) Ensure that the lessor and lessee are made aware of their roles and responsibilities; and rights and duties as per the lease agreements.
- c) Guide the process and procedures which need to be followed for consumer education in respect of the above and prescribe the relevant information that needs to be given to the communities.
- d) Provide a system in determining the allocation procedure for rental units with regard to reassignment of tenancy.

## 2. QUALIFICATION CRITERIA

The following main criteria is applicable:

- a) The person is lawfully resident in South Africa;
- b) He or she is legally competent to contract (i.e., 18 years of age or older, legally married or legally divorced and of sound mind);
- c) Married or cohabiting: he or she is married (in terms of the Civil Law or in terms of a Customary Marriage) or habitually cohabits with any other person;
- d) Community Residential Units (CRU): Persons earning R800 to R3500.
- e) Social Housing Programme: Persons earning R1 500 to R22 000.

## 3. LEASE AGREEMENTS

3.1 The lease agreement must have regard to the following pertinent aspects to prevent any disputes at a later stage namely:

- a) **Date of occupation:** when the lessee can physically move into and start using the property.
- b) **Method of payment:** how will the rental price be paid.
- c) **Duration of lease agreement:** Lease agreements should ideally be entered into for a period of one year and/or a maximum of two years, however a month to month or six-month agreement may be entered into depending on the circumstances of the tenant.

- d) **Date of payment:** the date by which the rental should be paid.
- e) **Consent to jurisdiction of court:** parties must agree to the jurisdiction of the court, should any legal actions or proceedings relating to the agreement or breach thereof be instituted.
- f) **Cancellation:** the lessee may choose to cancel the lease at any time but must give the lessor reasonable written notice as stipulated in the lease agreement. Should the lessee cancel prior to the expiration of the lease a cancellation penalty will apply. A one-month notice must be given to the lessor prior to the cancellation.
- g) **Breach of agreement:** should any party breach the contract; the aggrieved party must advise the defaulting party of the breach and provide a minimum timeframe to rectify the breach.
- h) **Escalation:** the reasonable escalation of the rental amount and the frequency of same.
- i) **Duties:** the rights and obligations of the lessor and lessee.
- j) **Maintenance:** the lessee's duty to maintain the inside of the premises in good order and condition as the time of occupation and as per the inspection report which highlights that the unit is in good condition.
- k) **Structural Alterations:** the lessee should not make any structural additions and alterations to the premises without consulting the lessor and obtaining written consent to do so.
- l) **Charges:** information on the amount of any charges payable in addition to the agreed rental amount.
- m) **Subletting:** a clause explicitly stating that no one else can reside on the property without the consent of the lessor and that the tenant is not allowed to sublet the property. The addendum to lease will verify the names and number of occupants should there be a dispute regarding occupancy.
- n) **Alienation of property:** the lessee shall not without having the written consent of the lessor having been obtained take any boarders or sublet the dwelling or part thereof.
- o) **Variation:** any variations on the said agreements are of no force and effect unless confirmed in writing and signed by all contractual parties.
- p) **Deposit:** The lessee shall pay a rental deposit equal to one month's worth of rent. The lessor must invest the rental deposit in an interest-bearing account. Any interest accrued must be returned to the lessee along with the deposit when they vacate the property.

\*A pro forma **Lease Agreement** is included in the detailed Guideline as Annexure 1.

\*A pro forma **Notice to Vacate and Termination of Lease Letter** is included in the detailed Guideline as Annexure 2.

### 3.2 A provisional allocation or selection shall cease under the following circumstances:

- a) Written withdrawal of application by the proposed lessee.
- b) Any further circumstances outlined in the lease agreement.
- c) Any other circumstances that the Department and Institution may feel justify the urgent termination or withdrawal of the rental allocation.

## 4. RE-ASSIGNMENT OF TENANCY

- 4.1 Transfer of tenancy: A request for transfer to alternative and more suitable accommodation may be accepted and dealt with strictly on the merit of each case. Tenants who intend to transfer from one rental unit to another must make an application in writing to the institution.

**The following aspects should be taken into consideration when assessing each request:**

- a) Medical reasons supported by a diagnosis from a registered medical practitioner: for example, applications for transfer to ground level due to mobility, handicap and poor eyesight may be considered.
- b) A change in employment status.
- c) Increase or decrease in family size.
- d) A change in financial status.

***Consult the Guideline for details of the supporting documents that must accompany the application.***

**NB:** Transfer will only occur once an appropriate unit is available, the tenant is not in breach of lease agreement, the tenant is not in arrears regarding rental monies payable.

- 4.2 Succession of tenancy: Ideally waiting lists and qualification criteria determine fairness in allocating units. However, the possibility of persons residing with the tenant may make an application to continue occupancy. This can qualify in situations where the original tenant passed away or abandoned the property, divorced spouse, or separated cohabiting partners who wish to take over the rental of the unit from the original tenant. Aspects to consider here are the period of abandonment, confirmation of death, which spouse/partner acquires custody of the children. While these factors may be taken into account the qualification criteria for rentals will also need to be taken into consideration.

***Consult the Guideline for details of the supporting documents that must accompany the application.***

**NB:** Transfer will only occur if the applicant meets the relevant qualification criteria, and the motivation is significant enough to permit the succession.

## 5. ILLEGAL SUBLETTING

Rental housing options are meant to provide housing of a good quality for low to middle income earners. Most people in this income group cannot secure or afford rental elsewhere. When a housing unit is sublet, there is no way to ensure that subletter falls within the defined income category. Therefore, subletting denies a needy person of a good quality rental housing opportunity which is safe and secure for his/her family. Furthermore, tenants do not have the necessary resources to undertake the proper screening and background checks of subletters. Overcrowding and illegal subletting of rental units also lead to various issues including an overuse of facilities, excessive use of water and electricity and unhygienic living conditions.

Thus, to prevent the above-mentioned it is essential that before anything is signed, it is important that all parties are clear about the terms and clauses of the lease agreement. The contract should also list the full names and details of all authorized tenants and state explicitly that no one else can reside on the property without consent from the lessor/landlord. In addition, the lease agreement must clearly state that tenants are not allowed to sublet the unit.

**5.1 All lease agreements must specify the following:**

- a) The tenant has to personally reside on the premises for the agreed period as per the agreement and may not allow any other person/s to occupy the premises or any part thereof instead of the tenant. The tenant must not sublet the premises or any part thereof without consulting the lessor and obtain written approval to do so.
- b) The tenant may not cede any of his/her rights in the lease agreement to any other person or body
- c) That the tenant understands and also accepts that the lessor will draw up and keep a waiting list of persons who intend to rent the premises and the lessor has the sole discretion to decide who the new lessee will be.

**5.2 The following clause should be incorporated into all lease agreements:**

*“The tenant shall not assign, underlet, part with the possession of or transfer the Premises or any part thereof or any interest therein or permit or suffer any arrangement or transaction whereby any person who is not a party to this Lease obtains the use, possession, occupation or enjoyment of the Premises or any part thereof irrespective of whether any rental or other consideration is given therefor. The lease created hereby shall be personal to the Tenant named in this Lease. Without limiting the generality of the foregoing, the following acts and events shall, unless approved in writing by the Landlord, be deemed to be breaches of this agreement.”*

**6. POST OCCUPATION TRAINING/CONSUMER EDUCATION**

The Department and Institution must conduct post occupation training bi-annually or as required, with tenants. The training should concentrate on the tenants understanding of the relevant housing programme, lease agreement and the general rules and regulations applicable to the rental accommodation. The following pertinent information should be workshopped to tenants:

- a) The definition, purpose, and importance of a lease agreement.
- b) The rights and responsibilities of a tenant as follows:

RIGHTS	RESPONSIBILITIES
1) Privacy	1) Payment of rental amount and utility bills timeously
2) Clean living conditions in the common areas of the building	2) Retain the rental unit in the same standard as when he/she moved in
3) Live in a well-maintained building that complies with health, fire, and safety protection requirements	3) Live by the rules of the building with consideration for all neighbours
4) Give adequate notice prior to moving out as agreed in terms of the lease agreement	4) Abide by the municipal by-laws

c) The rights and responsibilities of the landlord as follows:

RIGHTS	RESPONSIBILITIES
1) Collect rental amounts due on the agreed date as per the lease agreement	1) Allow tenants their privacy on the property
2) Cancel lease agreements if the rental amounts are not paid by the due date or as per the agreed arrangement should the tenant be in arrears	2) Enforce tenants' compliance with municipal by-laws
3) Terminate the lease agreement if the rental unit no longer meets the required health and safety standards by law	3) Ensure that the properties common areas are well maintained

d) Termination of Lease Agreement:

In circumstances where the tenant intends to vacate the rental accommodation, he/she should inform the supervisor/institution. This must be done by way of a written notice indicating that he/she wants to terminate the lease agreement.

The said written notice must contain the following:

- Occupant's name
- Building name
- Block number/Unit number
- Vacating date

e) The KZN Human Settlement's Housing Stock Maintenance Policy Guideline must be used to ensure that rental units are maintained in a satisfactory manner and maintenance is undertaken on a regular basis. This will ensure that units are in a standard condition and remain habitable during its useful life.

## 7. MEDIATION AND RESOLUTION OF DISPUTES PROCESS

The lessee should approach the municipality/SHI as a first point of contact should there be any issues regarding the adequate implementation of a lease agreement. Should lessee not reach any conclusion or if the matter cannot be resolved only then must he/she approach the rental housing tribunal. A pro forma Tenant Complaint Form is included in the detailed Guidelines.

The Department's Rental Housing Tribunals role is to resolve rental housing disputes between landlord and tenants arising from unfair practices, thus bring about harmony and stability in the rental property sector.

**The following procedure must be adhered to during a dispute:**

<b>Step 1</b>	A complaint is lodged by the aggrieved party with the department or municipality
<b>Step 2</b>	The complaint is then registered complaint's register and a case number is generated
<b>Step 3</b>	A preliminary investigation is then conducted by the Case Manager to establish if it is indeed an unfair practice or whether the Tribunal has jurisdiction

<b>Step 4</b>	The case is then scheduled for a mediation process where notices are issued to both parties to appear before a mediator in trying to resolve the dispute
<b>Step 5</b>	If the mediation succeeds, the matter is then resolved, and the agreement is reduced into writing
<b>Step 6</b>	If the mediation fails, a certificate of non-resolution is issued, and the matter is referred for a hearing.
<b>Step 7</b>	Summonses are then issued to both parties to appear before a Tribunal to resolve the matter through a formal hearing
<b>Step 8</b>	At the end of the hearing a ruling is made which is binding to both parties and it is enforceable as it is deemed to be an order of the Magistrate's Court

**NB:** Should any party be dissatisfied with the outcome of the matter, then he/she can approach the High Court for review

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## **REVISED GUIDELINES FOR PROJECT APPROVAL AND NHBRC ENROLMENT PROCEDURE**

The Revised Guidelines for Project Approval and NHBRC Enrolment Procedure were approved by the Honourable MEC for Human Settlements and Public Works for implementation with effect from 07 March 2023.

The National Home Builders Registration Council (NHBRC) warranty scheme was introduced in terms of the Housing Consumers Protection Measures Act 95 of 1998. In August 2001 the then Housing MINMEC approved that the NHBRC's warranty scheme shall apply to houses constructed as part of projects approved on, or after 01 April 2002 and was implemented in 2002. In view of there being no formalised procedure to address the stages and numbers of enrolments required. The Department developed a guideline which was approved by the MEC in 2009 on project approval and NHBRC procedure for implementation in the province to formalise and advise on NHBRC enrolment procedure and risk assessment requirements.

The National Home Builders Registration Council (NHBRC) is a regulatory body of the home building industry. It was established in 1998 in accordance with the provisions of the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998) to protect the interests of housing consumers and to ensure that builders comply with the prescribed building industry standards as contained in the Home Building Manual. The NHBRC represent the interests of housing consumers by providing warranty protection against defects in new homes. Ideally all new homes are to be enrolled with the NHBRC 15 days prior to construction.

The NHBRC enrolment has been extended to various Housing programmes as per the National Housing Code 2009, where new units are being constructed, these include the following:

- 1) Integrated Residential Development Programme (IRDP);
- 2) Finance Linked Individual Subsidy Programme (FLISP);
- 3) Consolidation Subsidy Programme;
- 4) Enhanced People's Housing Process Programme;
- 5) Farm Residents Housing Assistance Programme;
- 6) Individual Subsidy;
- 7) Upgrading of Informal Settlement Programme;
- 8) Rural Subsidy Projects;
- 9) Institutional Subsidy Projects;
- 10) Social Housing Programme;
- 11) Community Residential Units Programme;
- 12) Social and Economic Amenities Programme.

Furthermore, in terms of Section 2 of the Housing Consumer Protection Measures Amendment Act, Act 17 of 2007, all home builders must be registered with the NHBRC with the exception of a person who uses his or her own labour to build a home for his or her occupation if the home is part of an approved EPHP Project. According to Section 4 of Housing Consumer Protection

Measures Amendment Act, an owner builder may, in terms of Section 29, apply to the NHBRC for exemption from Sections 10 (registration) or 14 (enrolment). These amendments necessitated a review of current approval processes to include NHBRC enrolment and risk assessment requirements.

## **1. OBJECTIVES**

These guidelines aim to ensure the compliance with the Department's project process and inform the enrolment of housing programmes projects with the NHBRC as required in terms of the Housing Consumer Protection Measures Amendment Act, to enhance the housing product by addressing the quality of housing delivered.

## 2. NHBRC APPLICABILITY

The NHBRC warranty currently extends to subsidy programmes as outlined in Table 1, below:

Table 1: NHBRC Applicability

HOUSING PROGRAMME	EXTENT OF ENROLMENT AND APPLICABLE FEES				
	PROJECT ENROLMENT	HOME ENROLMENT	PROJECT ENROLMENT FEE PER UNIT	HOME ENROLMENT FEE PER UNIT	TYPE OF PROJECT
Integrated Residential Development Programme	Yes	Yes	R2,028.88	R1,521.66	Greenfield
				R4,078.05	Brownfield
Enhanced People's Housing Process programme	Yes	Yes	R2,028.88	R1,521.66	Greenfield
				R4,078.05	Brownfield
Consolidation Subsidy Programme	No	Yes		R3,696.79	Brownfield
Individual Subsidy	Yes	Yes	R2,028.88	R1,521.66	Greenfield
				R4,078.05	Brownfield
Rural Subsidy Projects: Informal Land Rights programme	No	Yes		R3,696.79	Brownfield

HOUSING PROGRAMME	EXTENT OF ENROLMENT AND APPLICABLE FEES				
	PROJECT ENROLMENT	HOME ENROLMENT	PROJECT ENROLMENT FEE PER UNIT	HOME ENROLMENT FEE PER UNIT	TYPE OF PROJECT
Disable Wheelchair House	Yes	Yes	R2,706.66	R2,030.30	Greenfield
Disable Wheelchair House	Yes	Yes		R5,440.39	Brownfield
Military Vets House	Yes	Yes	R3,022.02	R2,266.52	Greenfield
Military Vets House	Yes	Yes		R6,074.26	Brownfield
Upgrading of Informal Settlement Programme	No	Yes		R3,696.79	Brownfield
Farm Residents Housing Assistance Programme	Yes	Yes	Depends on the applicable subsidy quantum	Brownfield	
Institutional Subsidy Projects	Yes	Yes	Value of the property + Land cost = 1.2% of the market value		Greenfield
Finance Linked Individual Subsidy Programme (FLISP)	Yes	Yes	Value of the property + Land cost = 1.2% of the market value		Greenfield
Community Residential Units programme (CRU)	Yes	Yes	Value of the property + Land cost = 1.2% of the market value		Greenfield

### **3. PROJECT PROCESS**

The project process is generally made up of 4 stages. Risk Assessment and Planning is done in stage 1 and the second stage is feasibility and services Implementation stage. The third stage of the project process is top structure construction and the final stage is concluded by the project close-out. **(Refer to the Guidelines for a detailed breakdown of each stage of the Project Process).**

### **4. NHBRC PROJECT APPLICATION PROCESS**

The project application process must be in line with the Project Process Guidelines (<https://www.kzndhs.gov.za/Uploads/ProjectProcess.pdf>) and must comply with NHBRC checklist prior to submission to NHBRC for enrolment. (Refer to the NHBRC flow diagram in 6 below) The 2 stages of enrolments must be undertaken by the developer and the Department of Human Settlements must be simultaneously informed of this enrolment in writing to enable payment.

#### **4.1 STAGE 1: PROJECT ENROLMENT**

Applications must contain the following:

- a) Details of Developer and Developer's NHBRC Registration Number;
- b) Name of MEC;
- c) Unique KR approval number;
- d) A copy of the project descriptions including the preliminary geotechnical report;
- e) Schedule of proposed subsidy variations for project in the form of the subsidy variation formula for the project issued by the MEC;
- f) An indicative project programme;
- g) Proof of Scheduled payment to NHBRC;
- h) A copy of the feasibility report and all reports referenced in the feasibility report;
- i) Phase 1 geotechnical investigation.

#### **4.2 STAGE 2: HOME ENROLMENT**

Applications must contain the following:

- a) NHBRC project enrolment number;
- b) MEC name and unique confirmed approval number;
- c) Developer name and NHBRC Registration Number;
- d) Project name, location and phase;
- e) Number of units covered by the application;
- f) Home enrolment report;
- g) Site details and erf numbers based on approved Surveyor General's Layout;
- h) Phasing details and estimated start and completion dates of each phase;
- i) Plot numbers with type of subsidy applying in each case;

- j) Names and NHBRC registration numbers of any subcontracting home builders to be used in the construction of specific homes and the erf numbers of the homes that they are to build;
- k) The names, ID details and experience of the project manager and key staff;
- l) Proof of Scheduled payment to NHBRC;
- m) Phase 2 detailed geotechnical report

## 5. APPLICATION

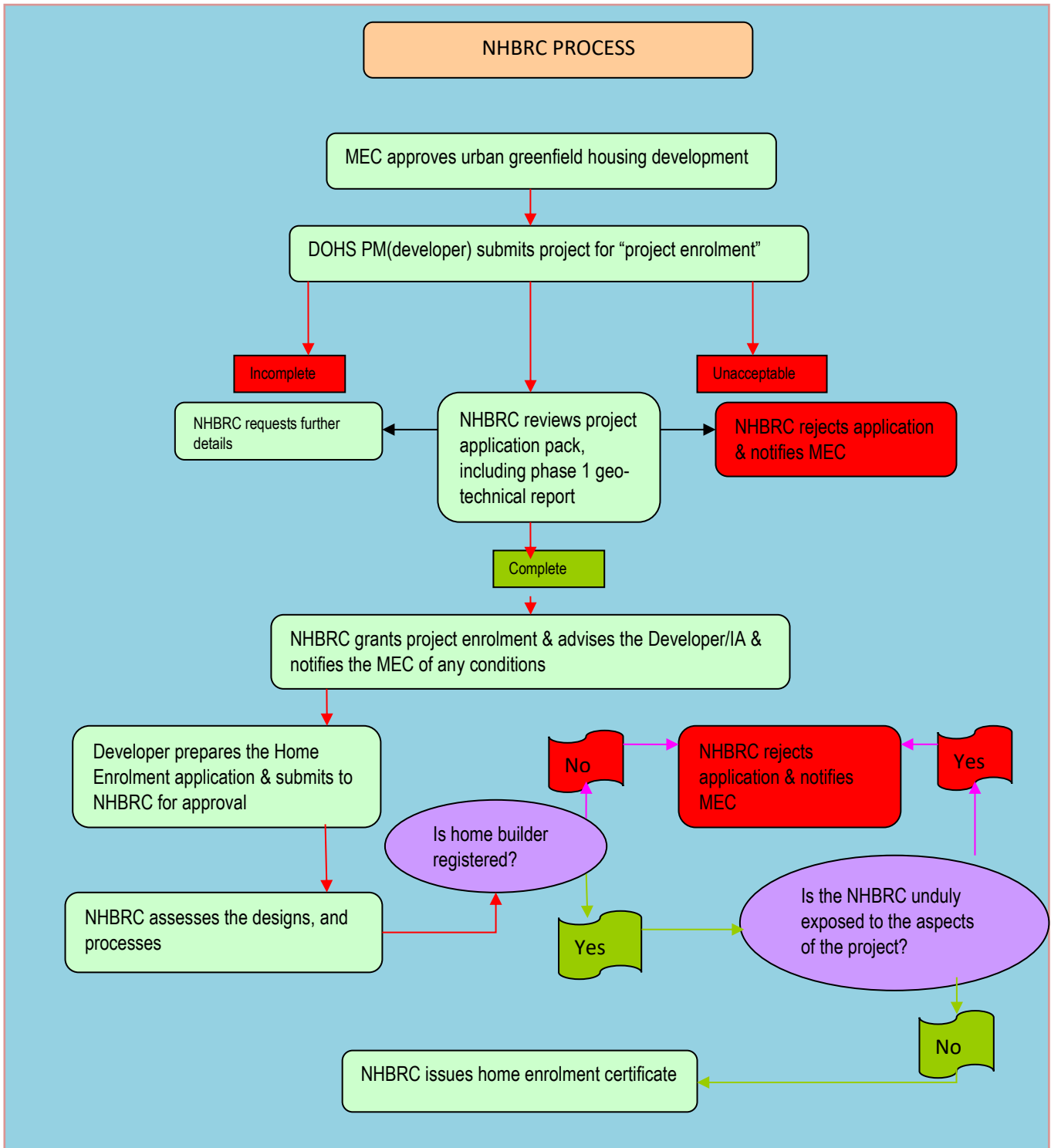
All new projects must follow the above procedure from date of approval of this policy and as summarised in the table below. New rural projects enrolling for Stage 1: Project enrolment, must in the interim be done in consultation with officials from the NHBRC who will deal with each project on its own merit until the appropriate procedure and documentation is designed and adopted for such projects.

Table 2: Summary of Project packaging, geotechnical investigations and project application

Packaging stage		Geotechnical Investigation		PHD Payment milestones	NHBRC Enrolment
Stage 1	Planning	Prefeasibility/Risk assessment		<b>Stage 1</b> R8353.00	Project enrolment Contractor enrolment
Stage 2	(a) Feasibility Stage	Preliminary Town planning layout, Settlement plan layout and report Detailed geotech report	House Construction (rural)	<b>Stage 2</b> R47 241.00 (Urban)  Rainwater Harvesting (Rural)	Home enrolment (rural)
	(b) Implementation	Town planning and Engineering Design General Plan			

Packaging stage		Geotechnical Investigation	PHD Payment milestones	NHBRC Enrolment
Stage 3	Top structure	House construction (urban)	<b>Stage 3</b> R141 294.00 (Urban)  R140 085 (Rural)	Home enrolment (urban) Warranty Certificates
Stage 4	Close-out	Completion of all relevant certificates.		

## 6. NHBRC PROCESS



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*The detailed Guideline for the Management of Rental Housing Stock and Revised Guidelines for Project Approval and NHBRC Enrolment Procedure may be accessed on the Department's website using the following link:*  
<https://www.kzndhs.gov.za/index.php/features/policy-documents/provincial-policies>