

CITY OF CAPE TOWN

CANCELLATION OF DEEDS OF
SALE OF BENEFICIARIES OF SITE
AND SERVICED PROPERTIES IN
THE FORMER BLACK LOCAL
AUTHORITY (BLA) AREAS WHO
ARE NO LONGER TRACEABLE AND
THE CONSEQUENT SALE TO THE
CURRENT OR APPROVED
OCCUPIER FAMILIES

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City of Cape Town

POLICY FOR THE CANCELLATION OF DEEDS OF SALE OF BENEFICIARIES OF SITE AND SERVICED PROPERTIES IN THE FORMER BLACK LOCAL AUTHORITY (BLA) AREAS WHO ARE NO LONGER TRACEABLE AND THE CONSEQUENT SALE TO THE CURRENT OR APPROVED OCCUPIER FAMILIES

2011

[17 January 2011]



CITY OF CAPE TOWN | ISIXEKO SASEKAPA | STAD KAAPSTAD

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DEFINITIONS

Black Local Authority (BLA): Khayelitsha, Nyanga, Philippi East/West amongst others

Integrated Serviced Land Project: An integrated provincial programme which delivered a range of physical resources led by the Provincial Government in which about 30 communities had participated between 1991 to 2005

Deed of Sale: Contractual agreement between the landowner (Provincial/Local Authority) and the individual beneficiary to transfer ownership of the serviced site to the latter.

Beneficiary: Person/family originally identified as occupants of the serviced sites

Consolidation Subsidy: A state subsidy to qualifying beneficiaries for the construction of a top structure (house).

Indigent Policy: Qualifying applicants may register as indigent for a period not exceeding one year, on condition, amongst others, that they must also have a prepaid electricity meter and a water management device installed.

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1. PREAMBLE

During the 1990's many of the former Own Affairs Authorities developed large numbers of residential serviced sites under the Integrated Serviced Land Project (ISLP). Beneficiaries were identified either by the local authority or a process involving local community structures.

At the time, these sites were also identified as properties to be sold to the then occupiers through the application of the then Extended Discount Benefit Scheme (EDBS). The Discount Benefit Scheme was instituted by the National Department of Housing in terms of Section 3 (5) b of the Housing Act, No. 107 of 1997, as a subsidy mechanism to transfer state-owned serviced sites and free-standing houses to qualifying beneficiaries. The discounted benefit was for an amount not exceeding R7 500, 00 with household income not taken into consideration. Qualifying occupants could buy these serviced sites at a discount, to a maximum of R7 500, 00.

One of the unintended consequences of the state's housing subsidy programme is the inordinate number of beneficiaries who are no longer in occupation of the properties for which they have originally been granted or earmarked, a housing subsidy. The reasons for this situation are varied. In the majority of cases, the original beneficiaries have illegally sold on the properties either before or after the conclusion of the Deeds of Sale and this has resulted in many current occupants of these properties not being the original beneficiaries and without formal title. This Policy aims to regularise this situation.

Furthermore, the Policy aims to address outstanding land ownership and township registration issues which are also reasons for individual transfers not able to be affected.

2. POLICY PRESCRIPTS AND PROVISIONS

2.1 POLICY INTENT

This Policy aims to:

- i. Establish an approved process whereby former own affairs subsidised site and services properties that are no longer occupied by the original beneficiaries can be re-allocated and sold to the qualifying current occupier or approved beneficiaries in terms of the EDBS;
- ii. Resolve the number of un-transferred sites in the areas as identified in section 2.2 below;
- iii. Expand on the process of tracing the missing beneficiaries; and
- iv. Assign responsibility for resolving the outstanding land ownership issues.

2.2 CURRENT POSITION

Of the many thousands of serviced sites developed under the ISLP, there remain approximately 2 257 properties where the original beneficiaries are no longer on site and its current status inhibits the transfer of these sites.

The number of sites, per area are as follows:

AREA	TOWN	APPROXIMATE NUMBER OF SITES
KTC AND MILLERS CAMP	NYANGA	358
BROWNS FARM	PHILIPPI WEST	261
SITE B	KHAYELITSHA	631
HARARE	KHAYELITSHA	195
GRIFFITHS MXENGE (T2V4C)	KHAYELITSHA	144
MAKHAZA	KHAYELITSHA	551
CROSSROADS	PHILPPI EAST	117
TOTAL		2257

In almost all of the cases, the then Own Affairs Departments entered into sale agreements with the original occupiers as the initial step in selling off these sites in terms of the Extended Discount Benefit Scheme.

Unfortunately the illegal on-sale of these properties by the original beneficiaries and subsequent occupiers over a period of time had resulted in a great number of disputes and these gave rise to the transfer process being halted. The City, as the title holder, must take all necessary steps to affect transfer to the original beneficiaries or subsequently approved beneficiaries.

2.3 OVERALL POLICY PRINCIPLES

The following guiding principles are inherent and applicable to the policy:

- i. Promoting security of tenure;
- ii. All necessary and reasonable steps will be taken to locate the original beneficiaries;
- iii. Upon transfer beneficiaries may access the Consolidation Subsidy Programme to build their top structures as part of a future project;
- iv. New Deeds of Sale will be signed with the original or subsequently approved beneficiaries;
- v. Lease agreements be concluded with current occupiers where transfer to current occupiers cannot be effected due to non-qualification, disputed and other unresolved land ownership issues;
- vi. That, non-qualifiers in respect of the EDBS be afforded an opportunity to purchase the serviced site at a price equal to the input costs (R7500, 00).

2.4 INSTITUTIONAL ARRANGEMENTS

2.4.1. The City is responsible for:

- i. Beneficiary identification, and establishing the identity and entitlement of persons claiming the Extended Discount Benefit Scheme (EDBS);
- ii. Dispute resolution, with regard to disputes pertaining to the identity and entitlement of persons claiming the EDBS;
- iii. Administration of the process regarding the purchasing of the services sites by non-qualifiers; and
- iv. Determination and collection of monthly rental where sites are being leased as per 2.3.v above.

2.4.2. The Provincial Department of Human Settlements (PDHS):

Where necessary, the PDHS will be approached to be an active partner in assisting the City in resolving all disputes related to beneficiary identification, land ownership and funding, in order to give effect to the execution of this policy and EDBS provisions.

2.5. LAND ISSUES

- i. There are still certain pockets of land in the list above where township establishment and registration have been delayed because the relevant land holdings are still registered in the name of the original public entity owners;
- ii. Relevant City staff to obtain clarity on which sites were developed by the Provincial Department and what sites were developed by the then local authorities;
- iii. The Housing Directorate's Land and Forward Planning Department to urgently initiate the required actions to resolve the outstanding land ownership and township establishment issues, in order for individual ownership of these sites to be effected.

2.6. FINANCIAL IMPERATIVES

- i. The transfer costs, up to a maximum of R150,00 per transaction will be recovered from the Provincial Department of Human Settlements in terms of the established EDBS guidelines;
- ii. The costs of the notices in the local newspapers as well as registered letters to the listed original beneficiaries will be sourced through normal operating budget provisions.

2.7. DATABASE INFORMATION

The relevant details of the beneficiaries will be submitted to the Housing Directorate's Housing Information Branch, who will be responsible for capturing the information on the City's Housing Database as assisted beneficiaries.

2.8. APPLICATION OF THE POLICY

2.8.1. Procedure for establishing contact with the original beneficiaries

In cases where the original beneficiary is no longer on site, missing or untraceable, the following actions must be followed:

- i. A letter must be sent by registered mail in the name of the original beneficiaries at the original allocated property addresses, requesting the beneficiaries to contact the housing officials;
- ii. An advertisement, requesting that original beneficiaries contact the housing officials, must be placed, to run once a week, for two consecutive weeks, in a local/community newspaper circulating in the area in which the property is situated and be placed in all housing offices;
- iii. If, thereafter, the beneficiaries still have not made contact with officials, they would then be deemed to be missing/untraceable and the necessary legal steps must therefore be taken to declare the existing deed of sale contract null and void.

2.8.2 Procedure to be followed when beneficiaries are traced (but not in occupation)

In instances where the original beneficiary comes forward within a period of 30 days after the notices has expired, the Manager: Existing Housing must then undertake a full investigation to determine whether the property should still be registered into his/her name or be registered in the name of the current occupier, after considering all relevant and available information.

2.8.3 Procedure to be followed where beneficiaries cannot be traced (no disputes)

In instances where the original beneficiaries do not come forward within a period of 14 days after the notices have expired, and there is no apparent dispute around the rightful occupation of the sites, a full investigation must be undertaken in order to determine whether the properties should be registered in the name of the current occupier households, after considering all relevant and available information. In such cases, the necessary legal steps must first be taken to cancel the current deed of sales with the original beneficiaries.

2.8.4 Procedures to be followed where beneficiaries cannot be traced (disputes to be resolved)

- i. All disputes must be facilitated by a specially constituted Dispute Resolution Committee (which should comprise of relevant officials, the ward councillor and the assistance of legal professionals, if and when required);
- ii. The Dispute Resolution Committee will consider all relevant information that will assist the Committee in the dispute resolution process in order to identify the rightful owner/occupier of the specific site;
- iii. The Dispute Resolution Committee will recommend to the City any favourable negotiated settlement.