The Transaction Support Centre: Lessons Learned

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With contributions from Lisa Hutsebaut (TSC legal support) & Kecia Rust (CAHF)

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Disclaimer

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FOREWORD

At the time of finalising this report, South Africa had just entered Phase 4 of a national lockdown implemented in response to the Covid-19 crisis. Together with other non-essential services, the TSC office has been shut for over a month, and only those clients who can be assisted remotely are being serviced.

The Covid-19 crisis is likely to have longer term impact on the TSC and on residential property markets more broadly. With regard to the entry-level housing market and subsidy housing in particular, as government prioritises health expenditure and income support for households affected by the crisis, we may see a reduction in conditional grants to provinces that finance the construction of subsidy houses and reduced allocations for the Finance Linked Individual Subsidy Programme. Funding that is available for human settlements may be directed towards reducing over-crowding and improving access to water and sanitation in informal settlements.

While mortgage lending in lower-income segments has been limited, according to the Banking Association of South Africa (BASA), 102 635 mortgages were granted to the so-called Financial Sector Charter (FSC) target market between Q1 2015 and Q1 2019. These households earn less than R24,300 per month in 2020 Rand terms. While little is in the public domain on the nature of employment in these households, it would be safe to assume that many will have suffered income shocks and are unable to service their mortgages. In addition, in recent years, the rental market has become a noticeably vibrant sub-sector in many lower-income neighbourhoods. To the extent that renter households suffer longer term income shocks, small-scale landlords too, will suffer. The immediate impact of Covid-19, followed by a prolonged period of no, or very limited economic growth, may dampen demand in entry-level housing markets, and recent increases in property values we have seen in some low-income neighbourhoods may be reversed.
In this context, it is critical to recognise the role that housing assets can play in the resilience strategies of lower-income households. Since 1994, the government’s national housing programme has completed an estimated 3.4 million housing units and handed these over to the lowest income families in the nation. An estimated two million of these houses are formally registered on the deeds registry, and subsidy housing stock now accounts for just under one third of all formally registered residential properties in South Africa. For the households who were fortunate enough to receive a subsidised house, it is probably the most valuable asset they will ever own.

In the context of Covid-19, this asset could provide valuable support to low-income households, improving their resilience and broadening their options for responding to the crisis. It could also be the key to unlocking productivity growth and private investment in a post-Covid-19 economy – something we will very clearly need.

Except, in many cases, this value is inaccessible. Too many housing assets are dead capital, to use the terminology of Hernando de Soto, the Peruvian economist. The cases documented in this report highlight a number of very significant barriers that impede formal housing market transactions. These barriers have very significant repercussions for property-owning households, for the development trajectories of lower-income neighbourhoods and, by extension, the transformation of South African cities.

A very significant and coordinated effort across government departments is required to address multiple problems that together give rise to this situation. But with responses to the Covid-19 crisis focusing almost exclusively on household risk to infection, rather than household resilience in the face of the pandemic, required changes to the property transfer system and the underlying policies, regulation and processes that support it may be overlooked.

That would be a great pity.

More than ever poor households need to be able to leverage housing assets to see them through what is likely to be a prolonged period of financial stress. Some households might need to draw down on equity as a temporary measure, while others might need to sell their properties and relocate. In these times, current policy that prevents beneficiaries of housing subsidies from selling their properties for eight years after transfer is particularly cruel. Rather than protecting poor households from making bad decisions, this policy is likely to force households to transact informally, leaving no opportunity for buyers to access finance, further depressing property prices.

Other barriers to formalisation will also be felt more acutely during and post the Covid-19 crisis. For instance, policies and processes that govern how deceased estates are wound up require attention, more so now than ever. Some interventions, such as increasing the small estates threshold to enable more households to wind up estates at no cost, are easily implemented. More difficult to address will be the implications of an increase in mortality rates on required capacity. Prior to the crisis, the Master’s Office was unable to handle the flow of cases, and local offices in some areas were shut even before the President announced the national lockdown because the sheer number of clients congregating there posed a health risk. In addition, the backlog built up during the lockdown will need to be processed before new cases can be accommodated.

Disputes about property ownership may also become more common and more pressing. Where there is no accessible mechanism to resolve these, communities will no doubt create their own.

The process of transferring new subsidy properties to beneficiaries has also been disrupted, adding to the already significant backlog. Many officials who address this backlog have been unable to work and are likely to remain under-utilised as their work is not deemed to be essential. Even if it was, key activities required for transferring backlog properties, including conducting door-to-door occupancy surveys to determine who owns and lives in these properties, will not be possible for as long as a material health risk exists.

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1 Data source: CAHF’s Citymark using Deeds Registry data supplied by Lightstone Property. CAHF apply a proxy with a set of rules to identify government-subsidised houses in the Deeds Registry data.
All the while, life will continue to happen in very profound ways, impacting directly on property ownership. Reconstructing the series of events to determine who owns what will become that much more difficult.

There may well be an increased appetite in the private sector to take on some of these tasks required to support low-income property owners. Private funding could support the roll-out of advice centres that enable households to make informed decisions about property transactions. And just as bank branches have supported the Department of Home Affairs to accept and process applications for official documents, they could also support the Master’s Office to capture documents required for estate administration, leveraging existing paperless systems. Likewise, data on the whereabouts of subsidy beneficiaries that exists within the private sector could enable officials to reach beneficiaries and facilitate transfer. Prior to the lockdown, the City of Cape Town was in discussion with banks to facilitate this.

But there are some interventions that only the state can implement. The legislation governing the transfer of immovable property will need to change before property transfer processes can become affordable and accessible. Likewise, the seamless transfer of data between the Department of Home Affairs and the Department of Justice could enable a truly paperless estate administration process and would significantly reduce fraud. In addition, only the Minister of Rural Development and Land Reform can appoint commissioners to adjudicate on unresolved property claims.

No doubt government has its hands full dealing with the Covid-19 crisis. But it is critical that it allocates some capacity to these interventions. They will materially assist households in managing their own personal crises resulting from the pandemic. Beyond the immediate need, they would unblock critical pathways for household- and private sector-led investment in the future, particularly in lower-income areas.

Given the very significant investment made by government in housing to date, and the role of housing on the balance sheets of income-poor South Africans, such action would support South Africa’s affordable residential property market and enable the development of an inclusive, growing economy post Covid-19.
## GLOSSARY

<table>
<thead>
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<th>Abbreviation</th>
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<tr>
<td>CAHF</td>
<td>Centre for Affordable Housing Finance in Africa</td>
</tr>
<tr>
<td>D&amp;TCSLA</td>
<td>Distribution and Transfer of Certain State Land Act, No. 119 of 1993</td>
</tr>
<tr>
<td>DARDLR</td>
<td>Department of Agriculture, Rural Development and Land Reform</td>
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<td>DHA</td>
<td>Department of Home Affairs</td>
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<td>DoJ</td>
<td>Department of Justice</td>
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<td>FLISP</td>
<td>Finance Linked Individual Subsidy Programme</td>
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<td>HDA</td>
<td>Housing Development Agency</td>
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<tr>
<td>HSS</td>
<td>Housing Subsidy System</td>
</tr>
<tr>
<td>L&amp;D</td>
<td>Liquidation &amp; Distribution Account</td>
</tr>
<tr>
<td>LTAA</td>
<td>Land Titles Adjustment Act, No. 111 of 1994</td>
</tr>
<tr>
<td>NDHS</td>
<td>National Department of Human Settlements</td>
</tr>
<tr>
<td>NHFC</td>
<td>National Housing Finance Corporation</td>
</tr>
<tr>
<td>PEAS</td>
<td>Paperless Estate Administration System</td>
</tr>
<tr>
<td>SALGA</td>
<td>South African Local Government Association</td>
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<tr>
<td>SANCO</td>
<td>South African National Civic Organisation</td>
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<td>TSC</td>
<td>Transaction Support Centre</td>
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EXECUTIVE SUMMARY

The Transaction Support Centre (TSC) is an action-research pilot project established by consulting company 71point4 in partnership with the Centre for Affordable Housing Finance in Africa (CAHF). The TSC is a walk-in advice office located in Makhaza, Khayelitsha, a lower-income neighbourhood of Cape Town consisting principally of subsidy properties built by the government. The TSC team assists clients to formalise tenure and / or resolve other property-related issues. Beyond assisting clients, the TSC’s partners, 71point4 and CAHF, document client case studies, explore mechanisms to optimise existing processes and identify systemic constraints that impede formalisation. These are shared with various public and private sector partners in an effort to improve client experiences and outcomes, and to drive systemic change.

The TSC has been operating for almost two years. Over that time, we have on-boarded 392 cases from walk-in clients who face a range of property-related challenges, as summarised below. Overwhelmingly, clients come to the TSC because they have problems with their title deeds.
### CASE STATUS

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<td>Transfer in progress</td>
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<td>Title deed handed over / transfer lodged</td>
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<td>Will drafted</td>
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<td>Other</td>
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### TYPES OF CASES

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### TYPES OF TITLE DEED PROBLEMS

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<td>Donation</td>
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#### Note:
*Total exceeds number of cases with title deed problems as one case may have multiple problems to regularise the title deed (e.g. informal cash sale & deceased estate)

### Box 1: Types of title deed problems

- **Deceased estate**: When the registered owner of a property dies, the property has to be transferred out of the deceased estate to heirs. This can be complicated where there is no will in place – a common problem in the low-value property market.

- **Informal cash sales**: A property sale where buyers and sellers do not use a conveyancer to register the transaction in the deeds registry. Typically, buyers and sellers will sign an affidavit endorsed by a street committee or at the police station. These affidavits are not legally binding documents. They are often not dated and can easily be forged. Buyers who have bought houses this way can be evicted by registered owners or heirs of deceased registered owners.

- **Primary transfers**: This occurs primarily in government-subsidised stock, where the property has not yet been transferred from the State to the beneficiary. The beneficiary may have been living in the house for many years but is not the registered owner and therefore cannot legally sell the property. If the beneficiary dies heirs cannot inherit the property. Beneficiaries also cannot interact with the municipality about their properties because they are not recognised as owners. This means that the municipality cannot directly bill for services delivered, and the beneficiary cannot get approvals for building work they wish to undertake on the property.

- **Administrative**: Includes cases where the original title deed has been lost / damaged or where the name or ID number on the title deed needs to be corrected (e.g. name misspelled). Other administrative cases may involve the TSC following up with City officials on title deeds which are registered in the Deeds Office but which have never been handed over to clients.

- **Divorce**: Where a wife or husband wants to remove their spouse from a title deed following a divorce.

- **Donation**: Typically involves cases where parents want to transfer properties to their child / children before relocating to a different area to retire (mostly to rural Eastern Cape).

- **"X" cases**: This is particular to government-subsidised housing stock where the title deed was issued in the name of a beneficiary, but someone else moved in, in many cases over twenty years ago. Registered owners have never lived on the property and often do not know the properties are registered in their names. Occupants of the properties are therefore not the registered owners.
In addition to assisting walk-in clients, the TSC has piloted the application of a blockchain-based property management system for 930 households in the area who have never received their title deed. This effort has yielded 656 cases where the TSC can facilitate the signing of sale agreements with the City of Cape Town, the first step in the process to transfer ownership to the beneficiary households. At the time of writing this report, 257 sale agreements had been signed, with a further 399 cases to be signed once the TSC office can reopen. The remaining 274 cases will require detailed follow up with the original beneficiaries to confirm data gathered during the occupancy surveys conducted as part of the regularisation process.

The scale of the problem

There are no reliable estimates of the extent to which official records of freehold title in formally demarcated, low-income areas have been compromised in South African cities. Based on the experience of the TSC and abundant anecdotal evidence it would be fair to say that data on property ownership in low-income neighbourhoods as reflected in the deeds registry, and consequently in other municipal administrative systems, is not aligned with reality on the ground.

This has profound implications. Local property markets are unstable, with competing systems to record and enforce property rights; municipalities are unable to identify and engage with property owners, impeding citizen-centric governance; and the financial sector is unable to support secured, housing-led investment, blocking a primary pathway for transformative financial inclusion. Critically, property owners are unable to realise the value of their housing assets and their wealth levels remain low.

There are a number of underlying causes. Among them is the primary transfer backlog on state-subsidised houses, commonly referred to as RDP properties. The backlog is now estimated to exceed one million properties. These properties are still officially owned by the state but have, often for several years, been occupied by beneficiary households, or commonly, their descendants, subsequent purchasers, tenants or other caretakers. Transferring these properties to rightful owners as recognised by both administrative and social systems is a complex task. Despite a National Title Deeds Restoration Programme which set aside a budget of R1.6 billion to eradicate the backlog by 2020/21, and the National Department of Human Settlements (NDHS) issuing a directive stipulating that title deeds must be ‘handed over’ before final payment to contractors, it would appear that the primary transfer backlog continues to grow. Realistically, it is unlikely that the underlying policies, systems and processes that create this outcome can be shifted quickly. In the interim, it is critical that alternative mechanisms are created to maintain immutable, visible records of who has taken occupation of subsidy properties. Beyond this, beneficiary households need an accessible, trusted mechanism to keep those records up to date.

With regard to existing registered stock, use of informal transaction mechanisms and failure to transfer properties to heirs after owners have died results in a gradual decay in the accuracy of ownership records as captured in the deeds registry over time. It becomes increasingly difficult to reconstruct the back-to-back transfers to enable registration in the deeds registry; registered owners or their heirs become difficult to trace, and facts become easier to dispute. Without intervention, areas that once were formal gradually become informal over time.

As the name implies, the Transaction Support Centre also aims to support buyers to find properties and access subsidies. To date, the TSC has been approached by 68 clients who require assistance with finding affordable properties, accessing mortgage finance and applying for capital subsidies known as the FLISP. The TSC has had to close or pend 18 of these cases, principally because clients have poor credit scores or are severely over-indebted and cannot access mortgage finance. At this stage the TSC is unable to assist clients on a journey to financial health and has no partner who can offer advice. This is a material gap.

While the cases we have seen at the TSC vary in complexity, the majority can be resolved. But each case requires effort and some cases can take many months to finalise. No matter how efficient the TSC’s processes become, solving title deed problems at scale cannot be done without mass², for the time being.

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² That is, there are limited opportunities to resolve cases at scale without incurring additional costs.
It is worth the effort. The potential value of these properties – occupied by very low-income households – and the very significant benefits that administrative visibility creates for households and cities cannot be overlooked. Certainly, the longer we wait to fix the problem, the worse it will get.

Recommendations

At the heart of the low-income housing market problem is a formal system that relies on expensive legal professionals to vet identities, confirm ownership and transfer properties through paper-based systems and manual processes. The system most certainly protects property market participants who can afford it. But for those who can’t, it has the opposite effect, incentivising informal transactions or undocumented transfers to heirs, putting current ‘owners’ at risk of losing properties that are not formally registered. This is exacerbated by current legislation that makes it illegal for beneficiaries to sell their state-funded houses for a period of eight years after acquisition.

The most obvious and critical imperative is to develop a more accessible and affordable system that does not increase risk for participants. This is by no means a ground-breaking recommendation nor is it new; it has been made by many entities for many years. Indeed, it remains puzzling that so little has been done to date. To the extent that this inertia arises from caution on the part of policymakers and officials as to the potential negative ramifications that any changes to the current system might have, the role of the TSC becomes that much more useful. It offers a contained environment to test new solutions and to assess their potential impact.

Aside from this primary recommendation, a number of other general recommendations have been developed based on the TSC’s experience, together with specific recommendations relating to individual case categories. These, together with the key stakeholder responsible for implementation, are summarised in the table below and discussed in more detail in this report.
Table 1: Summary of recommendations

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>PRIMARY RECOMMENDATION</th>
<th>STAKEHOLDER</th>
</tr>
</thead>
</table>
| General          | • Develop an accessible, affordable property registration system  
                   • Identify and test innovative systems to streamline the property transfer process  
                   • Expedite the implementation of the electronic deeds registration system  
                   • Explicitly incorporate specific needs and circumstances of lower-income property owners in the design of new systems  
                   • Revise or remove Sections 10A and 10B of the Housing Act, retrospectively so that past sales are not illegal  
                   • Appoint a Commission under the Land Titles Adjustment Act (LTAA) & Distribution and Transfer of Certain State Lands Act (D&TCSLA) in one pilot area, to test the application of these acts for regularising informal transactions, unlocking properties in deceased estates and adjudicating disputes  
                   • Develop a set of clear service protocols to manage common barriers to transfer that arise at a municipal level (rates arrears management, regularising building activity, locating title deeds that have not been handed over, primary transfer)  
                   • Review process to obtain VA copy of title deed                                                                                                                                                                    | Department of Agriculture, Rural Development and Land Reform  
                   Registrar of Deeds  
                   National Department of Human Settlements  
                   Department of Agriculture, Rural Development and Land Reform  
                   Municipality: Various departments                                                                                                                                         |
| Deceased estates | • Adjust the small estates threshold beyond current R250 000 limit  
                   • Assess processes and increase capacity at the Master’s Office  
                   • Enhance functionality of Paperless Estate Administration System (PEAS) and integrate directly with Home Affairs to limit risk of fraud                                                                                                                                 | Department of Justice  
                   Master’s Office  
                   Department of Home Affairs                                                                                                                                                    |
| Primary transfers| • Develop a set of data protocols and systems to enable improved beneficiary data management for primary transfer  
                   • Develop protocols to share data on ownership and occupancy to enable municipalities to recognise ‘business partners’ prior to transfer  
                   • Review policy on eligibility where ownership of the property has changed  
                   • Develop a process to track the full transfer process, the whereabouts of title deeds and evidence of final hand over to clients                                                                                                                                 | National Department of Human Settlements  
                   City of Cape Town: Tenure Admin & Transfers  
                   City of Cape Town: Property Value Chain  
                   National Department of Human Settlements  
                   Western Cape Department of Human Settlements  
                   City of Cape Town: Tenure Admin & Transfers  
                   City of Cape Town: Tenure Administration & Transfers                                                                                                                      |
| X-Properties     | • Drive consensus on a way forward on X-properties – additional Section 10c of Housing Act or LTAA commissioner                                                                                                                                                   | National Department of Human Settlements  
                   City of Cape Town: Tenure Admin & Transfers                                                                                                                                          |
| Property purchases| • Develop accessible debt rehabilitation pathways for credit-compromised clients  
                   • Review current processes for FLISP subsidy administration and address specific challenges (i.e. reduce turnaround time of administration process, reduce delay in payment of subsidy to sellers)  
                   • Create and communicate clear timelines for FLISP subsidy administration                                                                                                                                 | National Credit Regulator and formal lenders  
                   Western Cape Department of Human Settlements                                                                                                                                           |
A way forward for the TSC: Scaling and replicating the work while driving systemic change

The TSC’s journey has just begun. Its single pilot office has provided a basis to craft a growth strategy that can create local scale and enable replication. This strategy comprises a number of workstreams as summarised in Figure 2 below.

Figure 2: TSC growth strategy

As noted in the recommendations, South Africa must develop an accessible, affordable property transfer system. At the same time, it is also critical that other policies and processes, most notably around subsidy housing, are reviewed and adjusted in order to support market development. This will require intervention at a policy and legislative level. There is ample evidence, documented by the TSC and other entities to motivate for the necessary reform. Thus, the TSC’s efforts to drive this systemic change – termed workstream 1 in the growth strategy – will focus on increased engagement with policymakers and officials in the Department of Agriculture, Rural Development and Land Reform (DARDLR) and the National Department of Human Settlements (NDHS).

In addition, we propose the establishment of two expert advisory panels, a property law advisory panel and a property and technology advisory panel.

The property law advisory panel will monitor case law, propose and draft changes to legislation and regulation and represent clients on key test cases. Importantly, the panel would help drive the TSC’s market-driven agenda of supporting the growth and development of low-income property markets. The property and technology advisory panel will monitor key trends and developments in e-government, in South Africa and globally, with a focus on its application to property markets (e.g. digitised title deeds, electronic land registration). Ultimately, the move to more efficient and streamlined digital processes backed by sound policy and regulation is how the TSC will achieve its vision of making property market transactions cheaper and easier and thereby more accessible to low-income households.

While the TSC and other projects will continue to motivate for systemic change, this is likely to bear fruit only in the longer term. In light of this, the
TSC must optimise its current operations within the confines of existing policy and legislation, while motivating for change. The continued operation of the TSC will allow for the ongoing creation of evidence to support this process. Critically, it will allow households to get on with their lives and commence the process of securing formal tenure, preventing further deterioration of ownership records going forward. It will also start repairing the very significant damage that has already been done.

Creating an optimised TSC model – the focus of workstream 2 – requires the development and implementation of a case management system to automate certain tasks and to maintain an immutable record of client documents and transactions. Where cases can be resolved, the case management system will become the interface through which clients can interact with the formal property transfer system in the future. Where cases cannot be resolved, it will provide a safe repository of evidence relating to property ownership that might support an adjudicated formalisation process.

Optimising the work of the TSC will also require the negotiation and signing of Memoranda of Understanding (MOUs) with the City of Cape Town and Provincial Department of Human Settlements.

A further requirement is a mechanism to deal with disputed properties and cases where it is impossible to recreate the back-to-back transactions required for registration in the deeds registry (i.e. neutralised properties).

Creating this optimised solution (workstream 2) will lay the groundwork to drive local scale (workstream 3). Local scale can be achieved by following a more proactive approach to identifying properties in need of regularisation through door-to-door enumeration in the broader area surrounding the TSC. In addition, local scale can be achieved by piloting new front-end formats to enable client on-boarding and document collection, including TSC counters at bank branches or even retailers.

Improved technology and processes tested at scale locally will position the TSC well for national replication (workstream 4). While this work would leverage the case management platform developed in workstream 2 and learnings throughout the project, for the solution to be replicable across the country the TSC would need to negotiate MOUs with other municipalities and provinces. The TSC’s experiences in Cape Town can be leveraged, showcasing the importance of the work itself to other municipalities in order to encourage them to facilitate the creation of local centres. Should the TSC succeed in creating MOUs with Cape Town and the Western Cape, these could provide a template for other municipalities and provinces.

Aside from these agreements, replicating the work of the TSC in other provinces will require the TSC to engage directly with the National Housing Finance Corporation (NHFC) which administers the FLISP subsidy in other provinces.

The TSC’s ability to scale and replicate nationally would also support engagement with other national departments including the Department of Justice and the Master’s Office, and the Department of Home Affairs. These engagements could lead to further process improvements, particularly with respect to optimising the deceased estate process for low-income households.

While the work of the TSC is by no means easy, it must be done. The potential benefits of creating bankable, administratively visible records of property ownership are significant, and the risks and costs of failing to do so are profound. We have started the work, and while we may not complete it, each house that we formalise and each neighbourhood that we stabilise is a worthy achievement.
1. INTRODUCTION

South Africa has a vibrant residential property market which serves a growing proportion of the population. Nearly one third of all formally registered properties in South Africa were built by the state through the national housing subsidy programme. Beyond providing shelter for beneficiary households, the state’s investment in housing has created a vital source of stock for the country’s affordable housing market. However, the performance of these residential housing assets are constrained due to many factors, including the time and cost to transfer property in South Africa, the extensive title deed backlog of state-funded houses, the limited participation of mortgage lenders, as well as the lack of access to critical information and support to help low-income property owners navigate formal processes. It was with these and other factors in mind that the idea for a Transaction Support Centre was born.

The Transaction Support Centre (TSC) is a pilot, action-orientated research initiative that aims to formalise property markets in low-income areas and, in doing so, generate data to highlight policy, legislative and administrative issues for attention. Through its physical advice office, the TSC helps existing and prospective property owners conduct formal property market transactions. It also facilitates access to finance and subsidies for buyers and assists property owners to comply with local bylaws and building regulations. In doing so the TSC helps to build an active and responsible citizenship of property owners and encourages the participation of private sector investors including mortgage lenders, developers and professional service providers. At the same time, with the evidence it gathers from its efforts on the ground, and the case-by-case engagement with local and provincial government, the TSC also seeks to support the City as it improves its administration and governance of low-value property areas.

This document reports on the progress of the TSC’s first 22 months of operation, since the office officially opened its doors to clients in July 2018. The report outlines the TSC model and processes, provides an overview of the current client case load and sets out the key learnings from the pilot so far. Drawing on the learnings from client cases and numerous engagements with private and public sector, the report compiles a set of recommendations to support the development of a well-functioning low-value property market in South Africa, and identifies the entities responsible for the implementation of the interventions. Furthermore, the report outlines a number of priority next steps to create efficiencies within the existing operation, build scale and replicability across cities in South Africa, and drive systemic change within the policy and legal environment and stimulate participation by the private sector.
1.1 The problem statement

A fundamental feature of housing is its marketability – homeowners buy and sell property, investing their income and realising equity while they address their changing housing needs over time. Housing is therefore much more than shelter. It is also a leverageable asset, a critical component of household wealth, and a vehicle to absorb owner-households’ savings. According to CAHF’s Citymark data, the value of the 6.4 million registered residential properties in South Africa exceeds R5 trillion\(^3\), making property the most significant asset on the household balance sheet.

South Africa has a vibrant residential property market, which serves a growing proportion of the population. Over 30% of formally registered residential properties were financed by government and transferred directly to low-income beneficiaries of the housing subsidy programme, commonly referred to as the RDP programme\(^4\). These formally registered RDP houses are only part of the over three million government-subsidised houses that have been built by government since 1994. In addition, a further 868 000 pre-existing properties were transferred to occupant households as part of the Discount Benefit Scheme. Each year the subsidy programme adds in the order of 100 000 units to the housing stock, significantly exceeding the delivery of privately delivered stock.\(^5\)

The formal residential transaction process in South Africa is well governed. There are clear processes that underpin property transactions, framed by legislation that protects both buyers and sellers. These processes are facilitated by registered estate agents, professional conveyancers and regulated lenders. In suburban, higher-value segments of the market, standard processes work fairly well and realise value for transacting parties, service providers and the state. However, in lower-value segments of the market – including segments dominated by subsidy properties – formal transaction mechanisms are less common, and where they are pursued, they function less effectively: processes are difficult for transacting parties to navigate, take longer than is financially feasible for these parties and ultimately (as a proportion of the property value) cost more. In short, established processes align poorly with the needs of the transacting parties and the overall outcome is compromised.

Lower-income neighbourhoods are also plagued by administrative failure. Within the subsidy programme, over 850 000 units built before 2014 have yet to be transferred to beneficiaries. These properties have been recognised as part of a “Title Deeds Restoration Programme” of the national government. They are still registered in the name of the City or Province, and the households who live in these properties have no title deeds. This backlog continues to grow, even as significant funding has been provided to eradicate it.\(^6\)

Formal resale transactions in the low-value property market are less common, with many buyers and sellers relying on informal mechanisms to transact. Participation by mortgage lenders is limited, and the potential for property asset appreciation is curtailed.

From an urban management perspective, the use of informal mechanisms to transact undermines land administration systems and impedes formal interaction between cities and property-owning citizens. Many basic processes, from submitting building plans for approval, reporting faulty services and even receiving a municipal account, are impossible where the identity of property owners is not known by the City.

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\(^3\) Data sourced from Lightstone Pty (Ltd) in February 2020, with data up to end June 2019.

\(^4\) Reconstruction and Development Programme (RDP).

\(^5\) According to Statistics South Africa, the total number of residential units completed by the private sector in 2018 was 40 202. In contrast, according to the National Department of Human Settlements, the State built 99 454 units in the 2018/19 year.

The Transaction Support Centre (TSC) was conceptualised with the explicit intention of changing this status quo and supporting the growth of a residential property market that works effectively for the breadth of its participants, particularly lower-income earning participants. Through this, the work of the TSC enables the City to improve its administration and governance of low-value residential property markets, which in turn supports property market participants.

Figure 3: The importance of formal property markets for the citizen and the city
2. WHAT IS THE TRANSACTION SUPPORT CENTRE?

The Transaction Support Centre (TSC) is a pilot, action-orientated research initiative that was conceptualised by consulting company 71point4 and established in partnership with the Centre for Affordable Housing Finance in Africa (CAHF). The project was initiated in order to generate a more in-depth understanding of both the current constraints that inhibit, as well as opportunities to support, growth in the low-value property market. While traditional research methodologies can be useful, a learning-by-doing approach offers nuanced insight and real-life evidence that is required to build a sufficiently detailed understanding to identify workable solutions and to identify a pathway to change.

Initial funding to establish and operate the TSC for six months was provided by the South African National Treasury through the Cities Support Programme. The TSC subsequently obtained core funding from the Trust for Urban Housing Finance (TUHF) in June 2019 to cover operating costs for one year. In addition, the TSC has received project funding from the Cities Alliance for a range of deliverables including documenting key lessons captured in this document. It also received funding from the Mastercard Foundation to implement the pilot property register leveraging blockchain technology, which is documented in a separate report.

The TSC works at three levels:

- **Clients**: The TSC’s on-the-ground advice office works to formalise property markets by providing hands-on assistance and advice to clients with various property-related challenges.

- **Service providers**: In the process of resolving client cases the TSC engages with multiple stakeholders and service providers across the public and private sectors. The TSC uses real-life case studies to identify and highlight opportunities for improvement in key administrative processes and the need for better servicing models and product offerings from the private sector.

- **Policymakers and legislators**: The lessons learned through the TSC’s day-to-day interactions with clients and service providers are fed into the policy and legislative realm through the development of case studies, policy briefs and stakeholder engagements aimed at driving long-term, systemic change.
2.1 Serving clients

The foundation of the TSC model is providing hands-on assistance and advice to clients who want to formalise their tenure or who have other property-related challenges. For the time being, this is done through an on-the-ground physical office.

2.1.1 A local advice office in Makhaza

The TSC’s walk-in advice office opened its doors to clients in July 2018. The office is located in the Desmond Tutu Sports and Recreation Centre in Makhaza, a neighbourhood within Khayelitsha, a township in Cape Town.

Box 2: Khayelitsha property market

The TSC is located in the Desmond Tutu Sports and Recreation Centre in Makhaza, a neighbourhood within Khayelitsha, a township in Cape Town. Khayelitsha comprises roughly 47,000 registered residential properties, of which 4,550 were formally transacted through the deeds registry in 2018. Of the 4,550 that were traded, an estimated 3,160 were RDP houses, originally financed by the state. While the majority of these transactions were cash sales, 78 were bonded transactions.

Khayelitsha’s average churn rate of 1.1% per annum is below the City average of 3.5% per annum. The reasons for this are varied: many properties involve complications with property titles, making them ineligible for formal transactions. At the same time, informal transactions are quicker, cheaper and more direct. Buyers and sellers have limited market information: most transactions are by word-of-mouth, and there is no established mechanism for determining market value. Possibly because of this, lenders also haven’t seen value, and there has been limited lending. This has further entrenched the motivation for informal processes, dampening value.

Nonetheless, the opportunity in this market is significant. About two thirds of stock in Khayelitsha is valued at less than R300,000, making this an entry-level property market with lower prices than the cheapest newly built homes being constructed and sold by the private sector anywhere in the country. In 2017, Khayelitsha’s property market was one of the fastest appreciating markets in Cape Town – albeit off a low base – but demonstrating the potential for value when transactions are well supported with finance, and formally registered.

These rising property values have had a significant impact on market behaviour in the area. Heirs of deceased estates see the benefit of formalising ownership, securing their rights and preventing future family disputes. Buyers are increasingly aware of the risks of transacting informally. They are also in need of finance and capital subsidies to support affordability; few buyers can come up with the cash to support a property purchase. Sellers are also increasingly aware that their properties can realise higher values if they are ‘sale-ready’. This includes having a clear rates account and formal approval for any building works. While sellers in the area might still insist on cash-only buyers, higher finance-supported offers together with greater trust in the formal process may encourage them to wait for payment.

CAHF CityMark data, sourced from Lightstone in February 2020, with data up to June 2019. Citymark data is available here: http://housingfinanceafrica.org/documents/citymark/
The advice office is open six days a week and is currently staffed by one administrator (Masi), one community engagement officer (Myolisi) and an off-site legal advisor / case manager (Lisa). In addition, Jess provides ongoing support, closely monitoring market data and preparing case studies.

*Up until June 2020, the TSC office was staffed by two full time administrators.*
A simplified illustration of the case management process is provided in Figure 7. More detailed process diagrams per case category are provided in the sections that follow.

**Figure 7: Generic case management process**

<table>
<thead>
<tr>
<th>Client sign up</th>
<th>Document / information collection</th>
<th>Case review &amp; diagnosis</th>
<th>Case instruction</th>
<th>Registration of transfer</th>
<th>Title deed handover</th>
</tr>
</thead>
</table>

Frontline staff sign up new clients, advise clients on the documents and information required to diagnose and resolve their cases, prepare case files for the legal advisor and case manager to review, and answer any questions walk-in clients may have.

While most client interaction can take place telephonically, because the property registration process is paper-based, clients need to come into the office to drop off and sign original documents. Beyond this, the physical office serves a critical trust-building function. It matters that clients know there is a place to go and a person to talk to.

### 2.1.2 Service offering and fees

Initially, the TSC was conceptualised as a one-stop-shop that would facilitate formal residential property transactions in lower-income areas, and specifically, FLISP-linked mortgage financed transactions – hence the name. These transactions would leverage the stock of properties that were available and eligible for formal resale. However, after engagement with leading experts (notably lawyer and academic Leslie Downie, and City of Cape Town official Charles Rudman) the team amended its vision and mission, and now the office assists clients with a range of property-related challenges. This includes regularising title deeds (including formalising informal transactions that have taken place in the past, winding up deceased estates, helping clients who have never received their title deeds to locate them or obtain them), facilitating primary transfer, regularising unapproved building activity, resolving boundary encroachments, negotiating payment plans to settle high arrears on municipal accounts, buying and selling properties, as well as applying for FLISP subsidies and mortgages.

That the TSC offers this spectrum of services is critical for its success. A narrower focus on facilitating transactions for sale-ready properties would have rendered it irrelevant to the vast majority of property owners in the area who either have no intention of selling their properties or who face material barriers in doing so formally. Likewise, a narrower focus on title deeds alone would not leverage the ability of the TSC to drive active citizenship, municipal bill payment and compliance – necessary conditions for creating a viable, investable neighbourhood. That the TSC tries to assist clients with their most pressing property-related issues builds the reputation of the Centre, encouraging more clients to work through the TSC to regularise their properties.

The TSC’s breadth of services also provides an evidence base to support a holistic engagement with the City of Cape Town. The TSC’s experience demonstrates the impact of administrative failure in one domain on outcomes in another, and ultimately on the City’s ability to meet its own financial and social objectives. The TSC’s breadth of experience also supports engagement with other key national and provincial government departments, as well as a large range of private sector participants in the market.

The TSC does not earn a commission on any sales or transfers it helps facilitate. Professional services are provided free of charge with clients paying only R1 000 for disbursements on transfers paid directly to participating conveyancers. Where clients are indigent, the TSC covers this cost. This amounts to significant cost savings for clients. At standard tariff, professional fees on a transfer for a R200 000 property would amount to R6 750. Adding VAT, standard disbursements and Deeds Office fees would bring to the total cost paid by the client to R9 700.

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8 The Finance Linked Individual Subsidy Programme (FLISP) provides qualifying first-time homeowners with a subsidy of between R27 960 – R121 626 based on household income. Applicants must have applied and been approved for a mortgage loan in principle to qualify for the subsidy. For more information on the FLISP, see: [http://housingfinanceafrica.org/documents/flisp-answering-your-questions/](http://housingfinanceafrica.org/documents/flisp-answering-your-questions/)

9 Clients qualify for pro bono assistance if their individual income or household income is below R5 500 p/m or R6 000 p/m respectively or if the value of the property is R300 000 or less. The TSC tries to negotiate discounted fees for clients earning above this threshold.
2.1.3 Community engagement and education

Beyond providing assistance and advice, the TSC also runs community-based workshops. While these were intended to raise awareness of the benefits of formal processes and, on the flipside, the risks of informal processes, most property owners are well aware of these benefits and risks; rising property values have seen an increase in property-related disputes between parties to informal transactions that occurred in the past, or between heirs of estates that have not been formally wound up.

The overwhelming majority of those who attend community meetings do so precisely because they have problems with their title deeds. More than information or education, they need to access legal services to resolve these problems. These workshops are therefore a very effective channel to recruit clients. They also provide an opportunity to share some of the finer details of the legal system governing property ownership, particularly the implications of intestacy and marital status on property ownership and transfer.
2.2 Working with the City, the Province, private sector and other organisations

While the foundation of the TSC’s model is the interaction between the TSC and individual clients, in resolving (or attempting to resolve) the challenges faced by clients, the TSC identifies problem areas and potential solutions that require engagement with various service providers. The solutions might be simple, such as arranging meetings with sufficiently senior officials within the City or the Province who can clarify administrative processes and identify responsive colleagues within their lines of authority who will assist clients to resolve specific problems. Alternatively, solutions might require the development of national policy, a change in legislation or an entirely new administrative process. The TSC’s work requires ongoing engagement with officials across departments in the City of Cape Town including tenure administration, home ownership, urban management, housing development, revenue and debt management, and building development management. The TSC has no formal operating agreements with the City of Cape Town. With assistance from various colleagues, the TSC team has worked hard to build direct relationships with key officials who assist clients to resolve specific cases. In addition, the TSC engages with officials at the Provincial Department of Human Settlements\(^{10}\).

The TSC also engages extensively with private sector entities including mortgage lenders, local estate agents, conveyancers, electricians, architects and debt counsellors. Private sector partners of the TSC include conveyancers Norton Rose Fulbright, Abrahams & Gross and STBB who provide pro bono conveyancing services to TSC clients. The TSC prepares all cases, collates all documents and prepares complete files for conveyancers to review and act on.

The TSC accesses credit reports and tracing services free of charge through XDS, a registered credit bureau. Mortgage applications are currently referred to FNB, with the TSC often working directly with senior management to process unusual mortgage applications that would ordinarily be rejected.

The TSC also works closely with local leadership and community-based organisations. These relationships potentially enable the TSC to change local area norms with regard to how properties are transacted and how citizens engage with the City.

The TSC also has a partnership with Seso Global, a blockchain-based property platform, to create and maintain a property register in areas around the TSC office. This platform currently contains verified data of properties and soon-to-be property owners where no primary transfer has taken place yet. Going forward, the TSC would like to extend the platform to support more efficient case management, and to cover all properties in the immediate vicinity of the TSC’s office, subject to the consent of property owners.

The TSC documents client engagements and prepares case studies that are shared with officials, policymakers, lenders and other participants in the property value chain. These case studies bring visibility to the experience of lower-income property owners, demonstrating the impact of administrative processes, policy and legislation on households as they try to navigate existing processes. To this end the TSC has a research partnership with the City of Cape Town and has presented case studies to City officials and political leaders. Many of these case studies are included in this report. The TSC has also presented findings to other metropolitan municipalities through South African Local Government Association (SALGA).

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\(^{10}\) The TSC works with officials in the Project and Subsidy Administration, and Title Restoration Project and Devolutions departments.
2.3 Driving policy and legislative change

The long-term vision of the project is to use the evidence base generated by the day-to-day interactions with clients to drive systemic change, and ultimately, to correct the underlying systems and processes such that the need for a Transaction Support Centre is minimised. While the current constraints to the market are not only caused by barriers created by government policy and the legal environment, changes in these realms would have a material impact on the market. For example, lifting the eight-year restriction on the sale of subsidy houses would enable marketability and reduce the administrative burden on market participants. Likewise, amendments to legislation governing the administrative practices and requirements to transfer immovable property in South Africa allowing for the use of digital identities and signatures would significantly reduce the costs of transacting formally, making the property transfer system more accessible and inclusive.

To date the TSC has focused its efforts on engaging with policymakers within the Department of Human Settlements. In the future, the TSC and its partners will have to engage with several other departments, including the Department of Justice (DoJ), Department of Home Affairs (DHA), Department of Agriculture, Rural Development and Land Reform (DARDLR) and possibly, the Department of Technology and Science. This component of the project’s long-term agenda will require significant support and input from thought-leaders in the field of property law, governance, digital identity and security, and e-government systems.
3. THE EXPERIENCE OF THE TSC: SOLVING CASES

Since opening the doors in July 2018, the TSC has logged 392 walk-in cases.\(^1\) To date, 26 title deeds have been handed over to clients and seven transfers are currently lodged in the Deeds Office. A further 52 cases are currently in the process of being prepared for transfer\(^2\). In addition to these walk-in cases, the TSC has proactively enumerated a further 930 households across four sites in Makhaza, Khayelitsha, where no primary transfer has taken place (i.e. there are no title deeds). Of these, sale agreements with the City have already been signed on an initial batch of 257 properties, with the balance of 399 sale agreements for uncontested properties to be signed over the next few months.\(^3\)

The TSC’s main channel for client acquisition has been word of mouth and referrals from local leadership structures (street committees). The TSC actively engaged street committees to identify property owners in their areas with title deed problems and to encourage them to refer any owners wanting to sell their properties to the TSC. The TSC has also been interviewed on the local radio station, a successful channel for both client acquisition and education.

\(^1\) As at 11 May 2020.

\(^2\) This includes cases that have been instructed on and are currently being prepared for registration in the Deeds Office. It also includes cases that are almost ready for instruction but with some documents outstanding.

\(^3\) The signing of sale agreements is the first step in formally transferring a property. These signed sale agreements then become the basis for the conveyancing process to proceed and title deeds to be issued in the names of owners. The proactive effort to enumerate these households was part of a blockchain project implemented by 71point4 and CAHF, and funded by the Mastercard Foundation. The experiences of this project are documented in more detail in a separate report.
The TSC’s cases are varied, and many have their own particular complications which make them difficult to resolve. While the distribution of cases may not reflect the distribution of problems in the area (clients self-select and there may be a bias), the range of problems is likely to characterise the breadth of challenges in the area, and more broadly across low-income areas in South African cities.

As illustrated below, the overwhelming majority of walk-in cases involve title deed problems, most commonly informal sales that need to be regularised and deceased estates that need to be wound up. In addition, the TSC has 61 clients who have sought assistance because no transfer has yet taken place on their subsidy properties. Other matters involve administrative issues typically relating to official documents (including incorrect ID numbers or misspelled names), requests to donate properties and some divorces.

### Figures and Tables

#### Figure 11: Monthly client signups: 11 May 2020

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>392</td>
<td>9</td>
<td>5</td>
<td>34</td>
<td>24</td>
<td>33</td>
<td>9</td>
<td>2</td>
<td>6</td>
<td>16</td>
<td>13</td>
<td>19</td>
<td>31</td>
<td>8</td>
<td>39</td>
<td>42</td>
<td>23</td>
<td>27</td>
<td>23</td>
<td>10</td>
<td>13</td>
<td>10</td>
<td>2</td>
<td>1</td>
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</tr>
</tbody>
</table>

#### Figure 12: Walk-in caseload: 11 May 2020

**CASE STATUS**

- Open cases
  - Doc / info collection phase: 187
  - Transfer in progress: 52
- Resolved cases
  - Title deed handed over / transfer lodged: 33
  - Will drafted: 23
  - Other: 5
- Case pended / closed: 102

**TYPES OF CASES**

- Title deed problem: 165
- House purchase: 68
- Subsidy application: 23
- Draft will: 16
- House sale: 10
- Legal problem: 5
- Other: 5

**TYPES OF TITLE DEED PROBLEMS**

- Deceased estate: 112
- Informal cash sale: 112
- Primary transfer: 61
- Administrative: 16
- Divorce: 10
- *X* cases: 8
- Donation: 8

*Note: Total exceeds number of cases with title deed problems as one case may have multiple problems to regularise the title deed (e.g. informal cash sale & deceased estate)*
The TSC’s client base is predominantly female and deceased estate cases in particular are strongly skewed towards female clients. This is unsurprising given the mortality statistics in South Africa.\(^{14}\)

**Figure 13: TSC gender split: 11 May 2020**

<table>
<thead>
<tr>
<th>CASE TYPES BY GENDER</th>
<th>62%</th>
<th>38%</th>
</tr>
</thead>
<tbody>
<tr>
<td>House purchase</td>
<td>68%</td>
<td>32%</td>
</tr>
<tr>
<td>Subsidy application</td>
<td>65%</td>
<td>35%</td>
</tr>
<tr>
<td>Draft will</td>
<td>64%</td>
<td>36%</td>
</tr>
<tr>
<td>Title deed problem</td>
<td>61%</td>
<td>39%</td>
</tr>
<tr>
<td>Legal problem</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td>House sale</td>
<td>40%</td>
<td>60%</td>
</tr>
</tbody>
</table>

Of the 33 title deed cases that have been resolved, those relating to informal sales have taken the longest to finalise – in some cases, more than a year, followed by deceased estate cases. The elapsed time between client sign up and completion can be extensive as resolution of matters may require coordination across several entities and departments. While the direct hours dedicated to resolving each matter by the TSC team may not be extensive, the elapsed time is largely a result of waiting for a particular step in the process to be resolved. For each step, the TSC engages with the relevant regulatory body – often having to follow up multiple times to enquire on the status of a particular property or case. While there is clearly scope within the TSC for process improvement and efficiencies, including formalised service level agreements within a negotiated MOU with the City, given the complexity of cases and dependencies on multiple stakeholders the work of the TSC will remain time-consuming and difficult.

**Figure 14: Number of months to resolve cases by case type: 11 May 2020**

Note: Sample of 31 resolved cases. The number of months to resolve a case represents the total elapsed time between client sign up and when the title deed was handed over or lodged in the Deeds Office (for cases where the title deed has not yet been received at the time of reporting).

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\(^{14}\) According to the latest StatsSA mortality statistics (2016), the median age at death for men in South Africa is 52.7 and 62 for females. Source: [https://www.statssa.gov.za/publications/P03093/P030932016.pdf](https://www.statssa.gov.za/publications/P03093/P030932016.pdf)

\(^{15}\) The two administrative cases were applications for lost title deeds (VA applications). The four donation transfers were primarily requests from parents (TSC client) to transfer the property to their child/children. The three primary transfer / administrative cases involved the TSC following up on transfers that had either been completed but title deeds never handed over to beneficiaries or transfers the City of Cape Town had instructed on but were never completed by the conveyancers.
Of the 392 cases logged to date, 102 matters have been closed or pended either because the matter cannot be resolved through existing processes, or because the client has given up, and not followed through with the next step. Of these, 37 are informal cash sales which cannot be resolved, primarily because registered owners or heirs cannot be contacted or because sellers dispute the sale. A number of deceased estate cases have also been closed or pended principally because heirs have not returned to the TSC with required documents. As described in Section 3.1.2 below, while the process to wind up a deceased estate is clearly outlined, it can be onerous for clients.

To date, 18 cases opened by potential buyers have been closed without a sale. In 11 of these cases clients had poor credit scores and limited affordability. These clients are therefore ineligible for mortgage finance, and by extension for the Finance-Linked Individual Subsidy Programme (FLISP). At present, the TSC cannot assist these clients and is unable to refer them to organisations that provide effective and affordable financial counselling services because, to our knowledge, such organisations do not exist.

A further category where several cases are closed or pended relates to subsidy applications, principally consolidation subsidies to build houses where beneficiaries were allocated serviced sites. In these cases, the TSC will assist with regularising ownership of the serviced site if required but will refer clients to the City or the Province for the subsidy application.16

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16 Consolidation subsidies are only made available on a project basis. The City or Province appoints developers who manage the construction process as it is difficult for them to manage draw downs on a case-by-case basis. While this simplifies the administration of the subsidy, it often leads to a community-based form of rent seeking, with developers mobilising households to apply for subsidies to secure projects.

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Figure 15: Title deed handovers

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Administrative problem

Donation transfer

Deceased estate transfer

Informal cash sale regularised

Administrative problem / Primary transfer
Figure 16: Cases by case status: 11 May 2020

<table>
<thead>
<tr>
<th>Case category</th>
<th>Informal cash sale</th>
<th>House purchase</th>
<th>Deceased estate</th>
<th>Primary transfer</th>
<th>Subsidy application</th>
<th>Draft will</th>
<th>Administrative title deed problem</th>
<th>House sale</th>
<th>Donation</th>
<th>“X” cases</th>
<th>Divorce</th>
</tr>
</thead>
<tbody>
<tr>
<td>Document / info collection</td>
<td>47</td>
<td>42</td>
<td>22</td>
<td>46</td>
<td>2</td>
<td>1</td>
<td>8</td>
<td>1</td>
<td>2</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>Transfer in progress</td>
<td>18</td>
<td>3</td>
<td>19</td>
<td>18</td>
<td>10</td>
<td>5</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Resolved**</td>
<td>10</td>
<td>5</td>
<td>7</td>
<td>13</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Case pended / closed</td>
<td>37</td>
<td>18</td>
<td>19</td>
<td>16</td>
<td>3</td>
<td>5</td>
<td>2</td>
<td>2</td>
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</tr>
</tbody>
</table>

Note: *Where cases have multiple title deed problems, the case has been classified into the main type of problem. For example, 37 cases are a combination of informal cash sale & intestate problems. These cases have all been grouped together in the informal cash sale bucket. This is why the total for deceased estates in this chart is lower than the total shown in previous charts.

**Resolved cases = title deed handed over or transfer lodged in Deeds Office.

Key case categories are discussed in more detail below.
3.1 Problems with title deeds

The majority of cases that have come into the TSC have presented problems with title deeds, where there is a mismatch between the self-professed owner and the registered owner as per the title deed. In most cases, this is a result of an informal cash sale. In very many other cases, it is as a result of a deceased estate, or some other administrative failure. The main types of title deed problems the TSC sees are summarised in the box below.

Box 3: Types of title deed problems

- **Deceased estate:** When the registered owner of a property dies, the property has to be transferred out of the deceased estate to heirs. This can be complicated where there is no will in place – a common problem in the low-value property market.

- **Informal cash sales:** A property sale where buyers and sellers do not use a conveyancer to register the transaction in the deeds registry. Typically, buyers and sellers will sign an affidavit endorsed by a street committee or at the police station. These affidavits are not legally binding documents. They are often not dated and can easily be forged. Buyers who have bought houses this way can be evicted by registered owners or heirs of deceased registered owners.

- **Primary transfers:** This occurs primarily in government-subsidised stock, where the property has not yet been transferred from the State to the beneficiary. The beneficiary may have been living in the house for many years but is not the registered owner and therefore cannot legally sell the property. If the beneficiary dies heirs cannot inherit the property. Beneficiaries also cannot interact with the municipality about their properties because they are not recognised as owners. This means that the municipality cannot directly bill for services delivered, and the beneficiary cannot get approvals for building work they wish to undertake on the property.

- **Administrative:** includes cases where the original title deed has been lost / damaged or where the name or ID number on the title deed needs to be corrected (e.g. name misspelled). Other administrative cases may involve the TSC following up with City officials on title deeds which are registered in the Deeds Office but which have never been handed over to clients.

- **Divorce:** Where a wife or husband wants to remove their spouse from a title deed following a divorce.

- **Donation:** Typically involves cases where parents want to transfer properties to their child / children before relocating to a different area to retire (mostly to rural Eastern Cape).

- **”X” cases:** This is particular to government-subsidised housing stock where the title deed was issued in the name of a beneficiary, but someone else moved in, in many cases over twenty years ago. Registered owners have never lived on the property and often do not know the properties are registered in their names. Occupants of the properties are therefore not the registered owners.

The following sections explore in more detail four types of title deed problems: informal cash sales, deceased estates, so-called "X" cases and primary transfers.

3.1.1 Informal cash sales

The prevalence of informal mechanisms to transact in property in low-income areas has been well documented\(^\text{17}\). Compared to formal legal processes that require parties to use the services of professional conveyancers, can take several weeks to process, and typically cost up to ten per cent of the value of the property, informal mechanisms are accessible, immediate and inexpensive. Formal transactions also require sellers to provide a range of certificates and documents. These include rates clearance certificates, electrical compliance certificates and critically, in the case of subsidy properties, a waiver from the Provincial Department of Human Settlements if the sale takes place within eight years of the date of transfer. This waiver is a legal requirement in line with Section 10A of the Housing Act of 2003.

While some informal transactions are based on a verbal agreement, many buyers and sellers in Makhaza, Khayelitsha, rely on street committees or the local branch of the South African National Civic Organisation (SANCO) who typically charge R300 to endorse an affidavit as a record of the transaction. In some cases, sellers might give buyers copies of identity documents and original title deeds as proof of the transaction.

Community-based mechanisms offer an accessible alternative to facilitate transactions and have been widely used in the past. However, they create material risk for buyers. Buyers typically pay cash for the property on occupation and are exposed to subsequent competing legal claims of ownership. Where informal sales took place within the eight-year period following transfer, the sale is technically illegal. As demonstrated by recent case law, these sales can be reversed by the courts.\(^\text{18}\)

The risk of contestation increases as property prices rise and with that, the financial incentive for unscrupulous title holders to claim ownership. In addition, the existence of competing informal mechanisms to record ownership and resolve disputes creates instability in an area and undermines trust in the formal system. Legal and rightful claims to a property may be meaningless where the eventual mechanism to resolve an otherwise intractable dispute is physical force, including the destruction of the disputed property or an assault on parties to the dispute. Further, the lack of transparency about ownership creates a fertile environment for criminal activity, with syndicates fraudulently selling properties. It can be difficult to know who to trust when there is no single, trusted record of ownership in an area.

In order to protect buyers and sellers, and to support the development of housing markets as a whole, it is critical to entrench (accessible) formal processes as a norm in an area. In addition, it is critical to formalise informal transactions that have taken place in the past.

The TSC has seen 112 clients who wish to regularise informal cash sales that had taken place in the past. Many of these clients were identified with the assistance of street committees, who provided the TSC with documents relating to sales transactions they had endorsed. These documents typically have the names and contact details of buyers and sellers. To date, the TSC has secured title deeds for ten of these clients and has a further 13 cases where sellers or their heirs have been located and where there are no impediments to transfer. In the main, when sellers are contacted, they are happy to co-operate and sign documents.

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The process to regularise an informal cash sale involves several key steps as outlined in Figure 18 below.

**Figure 18: Informal cash sale regularisation process**

1. **Client sign up**
   - Electronically capture client information and case details
   - Give client document checklist
   - Scan any documents submitted on sign up

2. **Find seller/seller’s heirs**
   - Locate seller through buyer, community network or trace through credit bureaus
   - If seller located, request their co-operation in process (if successful proceed to step 4)
   - If seller is deceased, locate heirs and request their co-operation (if successful, proceed to step 3)
   - If seller or heirs’ whereabouts are unknown or parties are not willing to co-operate, process stalls – LTAA as a solution?

3. **Wind up deceased estate**
   - Assist heirs with winding up deceased estate (see deceased estate process)

4. **Collect supporting documents**
   - Client submits required documents (see Table 2)
   - TSC checks submitted documents
   - TSC assists client in obtaining outstanding documents (e.g. application for VA copy of title deed)

5. **Sign sale agreement**
   - TSC prepares sale agreement for buyer & seller to sign
   - TSC prepares power of attorney (POA) for seller to sign where applicable (i.e. if seller lives elsewhere)

6. **Instruct conveyancer**
   - TSC instructs conveyancers on transfer and submits all supporting documents
   - Conveyancer prepares transfer documents for signature
   - TSC arranges signature by client and seller or POA

7. **Rates & transfer duty clearance**
   - Conveyancers apply for rates clearance and notifies TSC
   - TSC communicates with client on any amount due – client pays or enters into payment plan with City
   - Or, TSC refers clients to apply for indigent rates relief
   - Clients submits proof to TSC & passed onto conveyancers
   - Conveyancer applies for transfer duty clearance*

8. **Transfer property**
   - Conveyancers lodge transfer at Deeds Office
   - Title deed registered
   - Title deed received from Deeds Office and handed over to client
   - TSC prepares will for client

*In South Africa, properties valued at R1,000,000 or less are exempt from paying transfer duties. Most of the properties the TSC deals with fall within this threshold, however, a transfer duty clearance certificate is still required

The documents that are required to support the process are summarised in the table below.
Table 2: Document checklist: regularisation of informal cash sales

<table>
<thead>
<tr>
<th>Buyer</th>
<th>Seller</th>
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<tbody>
<tr>
<td>1. Copy of ID</td>
<td>1. Copy of ID</td>
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<tr>
<td>2. Copy of spouse’s ID</td>
<td>2. Copy of spouse’s ID</td>
</tr>
<tr>
<td>3. Copy of marriage certificate or Final order of divorce (where applicable)</td>
<td>3. Copy of marriage certificate or Final order of divorce (where applicable)</td>
</tr>
<tr>
<td>4. Documentation in support of cash sale (affidavit, street committee letter, sale agreement etc.)</td>
<td>4. Original Title Deed</td>
</tr>
<tr>
<td>5. Proof of income*</td>
<td>5. Copy of recent rates bill</td>
</tr>
<tr>
<td>6. Proof of address and contact details of seller</td>
<td>6. Proof of address</td>
</tr>
<tr>
<td>7. Signed sale agreement</td>
<td>7. Rates clearance certificate</td>
</tr>
<tr>
<td></td>
<td>8. Pre-emptive clause waiver (if within eight years of transfer of subsidy properties)</td>
</tr>
<tr>
<td></td>
<td>9. Documents to wind up deceased estate (where applicable) – see table 3</td>
</tr>
</tbody>
</table>

*To assess client’s eligibility for pro bono legal services

Box 4: Case studies – informal cash sales

Case one: Eunice’s informal cash sale

In October 2018, Eunice* approached the TSC asking for assistance with regularising an informal cash sale from 2003. She brought with her an undated street committee letter detailing the cash transaction and a few months later came back to us with the contact details and residential address of the seller. Within 10 months the TSC had regularised Eunice's informal cash sale and handed over her title deed.

The key challenge with informal cash sale cases is locating the seller. Fortunately, in this case the seller was living in Khayelitsha which made it relatively easy for the TSC to facilitate the signing of a formal sale agreement.

The process was not entirely smooth. Due to a glitch in the transfer process, the first lodgement was rejected by the Deeds Office. The TSC had to go back to the seller to re-sign some paperwork, and this time he was less co-operative. This resulted in a further delay. Nevertheless, the transfer was re-lodged on 23 July 2019 and one month later Eunice received title to a property she purchased almost 14 years ago. The TSC has subsequently assisted Eunice with a will and she now hopes to access a consolidation subsidy from the government* to complete a top structure on her plot.

We spoke to Eunice on the day she received her title deed and she provided more background to her story.

Can you tell us more about how you bought this land?

After the seller sold the house to me, he went away to bury his brother in the Eastern Cape and he left without giving me the title deed. He never returned back and I started to search for him high and low but with no luck. I then heard he returned to Cape Town and I went to search for him where I heard he was living at. Unfortunately, I did not find him then I gave up a bit. I attempted to go to the Housing Department but they told me they cannot assist me without him being present because he never went to fetch the title deed in the first place. I managed to find him but asked me to pay him R5 000 more. I refused to give it to him and went to report him to the street committee, unfortunately he ran away again. I searched for him again and I heard he came back and was staying here in Makhaza but he refused to co-operate with me. This is when I decided to approach the TSC to assist me in mediating the issue. After that he finally agreed to co-operate in signing the documents and that is how we got to where we are right now.

How do you feel?

I am very, very happy because I had lost hope that this would succeed.

Why is it important for you to have a title deed?

A title deed is important because without it I would not have a chance to have a house. Now that I have it, I am able to build a house.

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19 Some of the cases presented to the TSC involve properties on which a top structure has not yet been built. Typically, these are serviced sites that were delivered by the government as part of the subsidised housing programme. If the property owner satisfies the subsidy qualification criteria, they can apply for a consolidation subsidy, specifically designed to enable them to construct a house on the site.
Case two: Mariya’s informal cash sale

On 20 July 2019 Mariya* approached the TSC for assistance with securing title to the property she purchased informally 15 years ago for R7 500. Mariya currently lives on the 160m² property in Khayelitsha in a shack that she shares with her sister and teenage son. Mariya was in contact with the seller, who was still living in Khayelitsha, and indicated that she was willing to formalise the transaction.

In less than two months the TSC had facilitated the signing of a formal sale agreement between Mariya and the seller and instructed the conveyancers on the transfer. By 30 October 2019, the transfer was lodged and registered in the Deeds Office and the client had received her title deed. Following this, the TSC prepared a will for Mariya to secure her child’s ownership of the property in the event of her death.

We spoke with Mariya on the day she collected her title deed from the office and she provided more background to her story.

**Please tell us about the journey you took in trying to change the title deed?**

I struggled very much. I bought this property in 2004. The seller gave me the title deed but then it got lost for many years. But it turned out that I had left it in the Eastern Cape and I found it and came back with it this year in March 2019. I then started on this process again of trying to change it [the title deed], by going from place to place struggling to get the proper assistance I needed. I then bumped into a guy from here in Makhaza, Khayelitsha, and he said I must come here at the Solomon Mahlangu Hall [location of TSC office]. I then came to this door and I found the most helpful people who gave me a warm welcome. They never gave up on me, they always made sure I understood the process. You always called with updates. I would like to give my utmost gratitude to you guys.

Note: *All client names have been changed

There are many informal cash sale cases that the TSC cannot resolve. The primary barrier to resolving these matters is locating the registered property owner – the original ‘seller’. In some cases, sales were concluded several years ago and the original seller is no longer alive. In other cases, they simply cannot be found. Of the 37 closed or pended informal cash sale cases, 22 cases cannot be resolved through existing processes because the TSC has not been able to trace the seller either through the buyer, community networks or credit bureaus.

In a significant minority of cases, the facts of the underlying sale are disputed. In some cases, registered owners do not dispute that the property was sold, but claim that the sales price was not agreed upon, and demand additional payment. In other cases, registered owners or beneficiaries might dispute that the sale ever took place. While the TSC can try to facilitate a discussion between the buyer and seller it has no authority to compel parties to talk to each other and cannot adjudicate a dispute.

Parties to disputed transactions would have to seek remedy in the High Court at significant cost. In addition, in the case of subsidy properties, where the initial informal sale took place within eight years of transfer recent court rulings have applied Section 10A of the Housing Act, and deemed those sales to be illegal. In one case, the courts ruled that ownership of the property should revert to the provincial housing authority in line with the Housing Act.²⁰

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According to the Msunduzi Integrated Development Plan 2019/20, the DARDLR has appointed three Land Titles Adjustment Commissioners.

Downie, L. (2011). Urban pro-poor registrations: complex-simple the Overstrand project. While Downie went so far as to identify a candidate commissioner, the Minister declined to appoint him. The reasons for this remain unclear.

More recent engagements with the DARDLR have also not yielded successful outcomes in spite of the very obvious and pressing need for a conflict resolution mechanism. Some have suggested a real fear on the part of officials that this would ‘open the floodgates’ with the DARDLR inundated with applications. Given that there are many disputed or irregular properties, this fear is not unwarranted. However, the Act need not be the first port of call. Local mediation and adjudication processes can be created, with the Land Titles Commissioner as a last step. In addition, the longer South Africa delays this critical process, the more intractable the problem becomes.

Where properties have been registered in the deeds registry, the Minister of Agriculture, Rural Development and Land Reform (DARDLR) can appoint a commissioner who would adjudicate matters as outlined in the Land Titles Adjustment Act no. 111 of 1993 (LTAA). The purpose of the Act is “to regulate the allocation...of certain land in respect of which one or more persons claim ownership, but do not have registered title deeds in respect thereof.” The Act allows for the allocation of title to a person claiming ownership of a property without having a registered title deed. A claimant would not need to have followed a sequence of formal and simultaneous transfers in order to obtain title, avoiding significant legal costs which are likely to be excessive relative to the value of the property. In line with the provisions of the LTAA, the Minister of DARDLR must (i) designate land to be dealt with under the Act and (ii) appoint a Commissioner to deal with each case. The Commissioner has wide powers to allocate property to a claimant and transfer property directly, with the Commissioner acting as transferor. In addition, the Minister can order that the costs of transfer be paid by Parliament, given the financial circumstances of the claimant.

To the best of our knowledge, there is only one case where the LTAA has been applied in an urban setting. This was in Edendale in the Msunduzi Municipality in KwaZulu-Natal. There have however been other attempts to apply the LTAA on urban land, most notably the test case in the Overstrand Municipality prepared by conveyancer and academic Leslie Downie, in 2011. While Downie went so far as to identify a candidate commissioner, the Minister declined to appoint him. The reasons for this remain unclear.

Solomon* purchased a serviced site informally in 2005 for R20 000. He paid cash to the seller, Eunice. The transaction was witnessed by members of the local street committee, and Solomon claims that he and Eunice signed an affidavit facilitated by SANC.

Eunice passed away in 2006. Solomon was in contact with her mother and brother who gave him a copy of Eunice’s ID and death certificate in warrant that the transaction had taken place. They told Solomon that they had hired a lawyer to wind up the estate, and would transfer the property to him. Periodically they would visit Solomon and ask him for a contribution to cover legal fees, which he paid. He did not ask for the name of the lawyer and did not keep a record of those payments.

In 2011, the family visited Solomon and requested that he pay a further amount of R120 000 to secure the title deed. He referred them to his business partner who was unable to negotiate a settlement. In 2013 they visited Solomon again, with a third party, who offered to purchase the stand for R70 000. Solomon did not want to sell.

In 2016, Eunice’s only child, Thando, visited Solomon. According to the laws of intestate succession, Thando could have the property transferred into his name, although he has not yet done so. Since that visit, Thando has tried to have Solomon evicted. Solomon was asked to attend a meeting at the Khayelitsha Magistrate’s Court on the 25th of June 2016 with the court manager in what seems to be a pre-court meeting to mediate the matter. Thando did not arrive, and so the case was left unresolved.

Solomon has very little documentary evidence of the transaction. He paid the seller in cash and the original affidavit which he signed with the seller has been lost. Even if he could produce the document it is not clear the court would accept it as a valid deed of sale; street committee affidavits are often not dated. Aside from being in occupation of the property, the only documents he can produce in support of the transaction are copies of the ID document and death certificate of the seller. While he can bring witnesses, presumably the family of the seller could do likewise.

Solomon may be able to defend an eviction case brought against him. Theoretically Solomon could bring a High Court application for a Declaratory Order that the title deed be transferred to his name. But this is a prohibitively expensive exercise and he has very little documentary evidence of the transaction.

Solomon’s disputed sale

Note: *Client name changed

Box 5: Case study - disputed informal cash sale
While officials may be reluctant to facilitate the process with the TSC, it may be possible, and indeed advisable, to prepare an application on behalf of clients for a commissioner to be appointed in an urban area, and through this, to establish a precedent for the application of the Act on a wide scale. The TSC has submitted a funding application for this purpose, as well as a LTAA memo for the DARDLR and will prepare an initial set of test cases to access this remedy.

3.1.2 Deceased estates

According to a recent analysis of property ownership records of properties in Khayelitsha undertaken for the TSC by Knowblet Data Sciences, 7,580 properties (roughly 16% of registered residential properties in the area) are owned by deceased individuals. Properties in deceased estates need to be transferred to recognised heirs as specified in a legal will. Where there is no will in place, as is common with TSC clients, the laws of intestate succession apply. These laws stipulate how a deceased estate is to be distributed between surviving heirs.

Deceased estates that fall below the Small Estates Threshold, currently set at R250 000, can be wound up by a person or persons appointed by the Master of the High Court at no cost to the estate as stipulated by Section 18(3) of the Administration of Estates Act, (Act 66 of 1965). Where the estate value exceeds this threshold, the estate must be wound up by a lawyer at a standard cost of 3.5% of the estate value. Aside from being cheaper, the small estate process is also more convenient as estates can be reported at the local magistrate courts instead of the Master’s Office in the city centre.

The small estate threshold is set by the Department of Justice (DoJ) and was last reviewed in 2015. It is not clear what data the DoJ uses to determine the threshold, nor what prompts a review of the threshold value. With rising property prices, more properties in lower-income areas exceed this threshold making the costs associated with winding up a deceased estate prohibitive for lower-income households.

The process of winding up estates where no will is in place requires access to data on the next of kin who stand to inherit in line with the laws of intestate succession. While published documents indicate that the Master has developed a system to integrate directly with the Department of Home Affairs, it does not appear this system has been rolled out. Clients reporting an estate are required to complete and sign a Next of Kin or J192 Affidavit providing the names and ID numbers of relatives who might have a claim on the estate. It appears that this data is not independently verified by the Master by cross checking with the Department of Home Affairs despite integration with Home Affairs24, which maintains official records of this data. Thus, the Master relies on the integrity of the signatory, leaving the process open to fraud.

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23 This analysis was undertaken by Knowblet Data Sciences by comparing deeds registry data and Home Affairs data. The analysis was undertaken free of charge as a service to the TSC.

24 See Office of the Master of the High Court. A Guide. 2016. Pg. 13. https://www.justice.gov.za/juscol/docs/2016-Guide-MOH.pdf. To quote from that document: “Furthermore we have developed an integration system with the Department of Home Affairs, which allows the offices to extract details from a deceased directly from the database of Home Affairs. This ensures that details are captured correctly and curbs any fraudulent activities”. 
The Master’s Office in Cape Town has on occasion had to close their doors to the public to deal with the extensive backlog of deceased estate and other matters. Implementing digital estate administration processes and integrating directly with Home Affairs databases would significantly improve the efficiency and workflow of the Master’s Office.

The TSC has logged 67 deceased estate cases, of which seven matters have been resolved and 19 cases are currently being prepared for transfer. The simplest of these matters was resolved in six months. Delays in the process arise due to the significant backlog at the Master’s Office for important documents, Letters of Appointment and the J192 (next-of-kin affidavit). The process of following up on deceased estate matters at the Master’s Office is also onerous as all queries must be logged in person; there is currently no system in place for applicants to track the progress of applications online and the Master’s Office does not send notifications when documents are ready for collection or when they have been posted. Implementing a simple notification system is entirely possible as the Master’s Office already captures the name and mobile number of the person reporting the estate on the Paperless Estate Administration System (PEAS) which has been rolled out at all 15 Master’s Offices across the country and at 278 Magistrate Courts.

While not unique to deceased estate matters, delays in the transfer process also arise where there are arrears on municipal accounts. These must be settled before the property can be transferred to heirs. To reduce delays arising from arrears, the TSC negotiated a workaround solution with the City of Cape Town. This solution allows a rates clearance certificate to be issued prior to full settlement of debt, provided clients pay an initial deposit and commit to a payment plan to settle the remaining debt.

Deceased estate transfers may also be coupled with other title-related challenges, including informal transactions, no primary transfer, as well as misplaced or stolen title deeds which add further delays to the process.

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25 The total number of cases with deceased estates that need to be wound up is 112 of which 67 cases only involve the deceased estate being wound up while the remainder involve multiple problems (e.g. informal cash sale & deceased estate).

26 Despite the name the PEAS system is not paperless as all documents first need to be submitted as hard copies. The PEAS system captures the information contained on the hard copies and stores digital copies of all supporting documents. See: [https://www.lssa.org.za/wp-content/uploads/2020/01/ICMS-MASTERS-PEAS.pdf](https://www.lssa.org.za/wp-content/uploads/2020/01/ICMS-MASTERS-PEAS.pdf).

The process followed to resolve deceased estate cases where the estate is valued at R250 000 or less is outlined below.

**Figure 19: Deceased estate process: estate value <R250 000**

1. **Client sign up**
   - Electronically capture client information and case details
   - Give client document checklist
   - Scan any documents submitted on sign up

2. **Collect supporting documents**
   - Client submits required documents (see table 3)
   - TSC assists client in obtaining outstanding documents (e.g. application for VA copy of title deed)
   - TSC prepares renunciation of benefits for other intestate heirs (if applicable)

3. **Report deceased estate**
   - TSC assists client to fill in standard set of Dept. of Justice deceased estate documents *
   - TSC reports deceased estate on behalf of client at Master’s Office
   - Master’s Office issues Master’s Letter of Authority
   - TSC requests certified copy of next-of-kin affidavit (J192) from Master’s Office

4. **Instruct conveyancer**
   - TSC instructs conveyancers on transfer and submits all supporting documents
   - Conveyancer prepares transfer documents for signature
   - TSC arranges signature by client

5. **Rates & transfer duty clearance**
   - Conveyancers apply for rates clearance and notifies TSC
   - TSC communicates with client on any amount due – client pays or enters into payment plan with City
   - Or, TSC refers clients to apply for indigent rates relief
   - Clients submits proof to TSC & passed onto conveyancers
   - Conveyancer applies for transfer duty clearance**

6. **Transfer property**
   - Conveyancers lodge transfer at Deeds Office
   - Title deed registered
   - Title deed received from Deeds Office and handed over to client
   - TSC prepares will for client

*Documents can be downloaded at: https://www.justice.gov.za/master/deceased-how.html

** In South Africa, properties valued at R1 000 000 or less are exempt from paying transfer duties. Most of the properties the TSC deals with fall within this threshold, however, a transfer duty clearance certificate is still required.

Where the deceased estate exceeds the small estate threshold there are several statutory requirements that must be met. This includes the appointment of an attorney to wind up the estate, the advertisement of the estate for creditors in the Government Gazette and a local newspaper28 for a period of 30 days, the preparation of a Liquidation and Distribution account (L&D), and the requirement for the L&D account to be kept open for inspection at the Master’s Office for a period of 21 days. The process to resolve deceased estate cases where the estate is valued above R250 000 is outlined below.

28 A newspaper circulated in the area the deceased lived.
Figure 20: Deceased estate process: estate value >R250 000

1. **Client sign up**
   - Electronically capture client information and case details
   - Give client document checklist
   - Scan any documents submitted on sign up

2. **Collect supporting documents**
   - Client submits required documents (table 3)
   - TSC assists client in obtaining outstanding documents (e.g. application for VA copy of title deed)
   - TSC prepares renunciation of benefits for other intestate heirs (if applicable)

3. **Attorney appointed**
   - TSC advises client on costs to wind up estate
   - Client pays deposit to attorney to cover disbursements (R2 600)
   - Attorney appointed and issues letter confirming that they will act as an agent for the executor (the client)

4. **Report deceased estate**
   - TSC assists client to fill in standard set of Dept. of Justice deceased estate documents*
   - TSC reports deceased estate at Master’s Office on behalf of client
   - Master’s Office issues Letter of Executorship, document sent to attorney
   - TSC requests certified copy of next-of-kin affidavit (J192) from Master’s Office

5. **Attorney winds up estate**
   - Attorney advertises estate for creditors (30 day period)
   - Attorney prepares Liquidation & Distribution account (L&D), TSC arranges client signature
   - L&D account lodged at Master’s Office
   - L&D account kept open for inspection (21 day period)
   - Attorney finalises estate process

6. **Instruct conveyancer**
   - TSC instructs conveyancer on property transfer and submits all supporting documents
   - Conveyancer prepares transfer documents for signature
   - TSC arrange signature by client

7. **Rates & transfer duty clearance**
   - Conveyancers apply for rates clearance and notifies TSC
   - TSC communicates with client on any amount due – client pays or enters into payment plan with City
   - Or, TSC refers clients to apply for indigent rates relief
   - Clients submits proof to TSC & passed onto conveyancers
   - Conveyancer applies for transfer duty clearance**

8. **Transfer property**
   - Conveyancers lodge transfer at Deeds Office
   - Title deed registered
   - Title deed received from Deeds Office and handed over to client
   - TSC prepares will for client

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*Documents can be downloaded at: https://www.justice.gov.za/master/deceased-how.html

**In South Africa, properties valued at R1 000 000 or less are exempt from paying transfer duties. Most of the properties the TSC deals with fall within this threshold, however, a transfer duty clearance certificate is still required.
### Table 3: Deceased estate document checklist

<table>
<thead>
<tr>
<th>Documents required to report estate</th>
<th>Documents required to transfer property</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Original or certified copy of death certificate</td>
<td>1. Copy of deceased’s ID</td>
</tr>
<tr>
<td>2. Original or certified copy of deceased’s marriage certificate (where applicable)</td>
<td>2. Certified copy of spouse of person appointed as Master’s Representative</td>
</tr>
<tr>
<td>3. Original will of deceased (if available)</td>
<td>3. Copy of marriage certificate of Master’s Representative</td>
</tr>
<tr>
<td>4. Certified copy of ID of person appointed as Master’s Representative</td>
<td>4. Original title deed</td>
</tr>
<tr>
<td>5. Letter from attorney acting as agent of executor (if estate &gt;R250 000)</td>
<td>5. Copy of Master’s Letter of Authority</td>
</tr>
<tr>
<td>6. Certified copy of next-of-kin affidavit (J192)</td>
<td>7. Proof of income of Master’s Representative*</td>
</tr>
<tr>
<td>8. Copy of recent rates account</td>
<td>8. Copy of recent rates account</td>
</tr>
<tr>
<td>9. Rates clearance certificate</td>
<td>9. Rates clearance certificate</td>
</tr>
</tbody>
</table>

*To assess client’s eligibility for pro-bono legal services

### Box 7: Case studies – winding up deceased estates

#### Case one: Victoria’s deceased estate

In May 2019, Victoria* approached the TSC for assistance with transferring her deceased husband’s property into her name. Her husband died in 2009 and in the same year she was appointed as the executor of his estate which included the 175m² property in Khayelitsha. Like many other deceased estate cases on the TSC books, the property had remained registered in the name of a deceased partner for almost a decade.

Initially Victoria’s case appeared to be a relatively straightforward transfer and by August 2019 the transfer documents were signed and the transfer looked set to be completed within weeks. However, progress halted when we could not get the rates clearance certificate from the City. There was an amount of R1 200 outstanding on the municipal account. Our client, a state old age grant recipient earning R1 780 per month, could not afford to pay this amount in one instalment. The TSC assisted her to apply for indigent status with the City of Cape Town and to negotiate an arrangement to pay off the debt over time. Under normal circumstances, transfer cannot proceed until the rates clearance certificate is issued on full settlement of the debt. Given our client’s limited affordability this could take up to a year to resolve. In order to proceed with the transfer, the TSC proposed a workaround solution to the City that would see them issue the rates clearance certificate to our client prior to the final settlement of the debt subject to our client entering into a payment plan. The City agreed to pilot the workaround in November 2019 and by early February the conveyancers had reapplied for the rates clearance certificate. At the time of writing this report the outcome of the rates clearance was still pending.

#### Case two: Lungisile’s deceased estate

In April 2019, Lungisile* approached the TSC for assistance with transferring her deceased mother’s property into her name. As with most deceased estate cases, the TSC requested the certified copy of the next-of-kin affidavit from the Master’s Office on behalf of the client. This document is critical to the process as it identifies the heirs to the deceased estate. On receiving this document, the TSC discovered that the client was not the only heir to her mother’s property; she is one of three siblings. For the transfer to proceed, Lungisile’s siblings would need to either renounce or donate their share in the property. Of the two siblings, one is alive and was willing to renounce. Lungisile’s other brother, however, is deceased. Based on the laws of intestate succession, the deceased brother’s claim passes to his surviving children. The deceased brother has one child and therefore the current intestate heirs to the property are Lungisile (the client) and the child of her deceased brother.

The child is nine years old. The fact that the child is still a minor presents two challenges for this case and ultimately for the client. The first challenge is that minors cannot renounce or donate their share of a property. Secondly, the Administration of Estate Act 66 of 1965 Section 80 places certain restrictions on the sale or transfer of property registered in the name of a minor, which may have implications for the client’s ability to sell or borrow against the property at a later stage, or at least until the child turns 18. Despite this, the alternative to not do anything and have the property remain registered in the deceased estate is not viable. After discussing this with Lungisile she agreed to proceed with the transfer of the property into both her and her nephew’s name.

With one hurdle overcome, the TSC encountered another. The original title deed for the property is lost and an application for a new VA copy of a title deed costs between R1 200 – R1 500. Lungisile is currently unemployed and therefore unable to cover this cost. The TSC has therefore been forced to pend her case until a time when she can afford to replace the lost title deed, or when the costs are revised and lowered.

#### Case three: Nomsa’s deceased estate

In 2017, Nomsa’s husband passed away. Like many others, she contacted the TSC for assistance with the conveyance of her deceased husband’s property into her name. Nomsa and her husband were married for almost a decade. Initially Victoria’s case appeared to be a relatively straightforward transfer and by August 2019 the transfer documents were signed and the transfer looked set to be completed within weeks. However, progress halted when we could not get the rates clearance certificate from the City. There was an amount of R1 200 outstanding on the municipal account. Our client, a state old age grant recipient earning R1 780 per month, could not afford to pay this amount in one instalment. The TSC assisted her to apply for indigent status with the City of Cape Town and to negotiate an arrangement to pay off the debt over time. Under normal circumstances, transfer cannot proceed until the rates clearance certificate is issued on full settlement of the debt. Given our client’s limited affordability this could take up to a year to resolve. In order to proceed with the transfer, the TSC proposed a workaround solution to the City that would see them issue the rates clearance certificate to our client prior to the final settlement of the debt subject to our client entering into a payment plan. The City agreed to pilot the workaround in November 2019 and by early February the conveyancers had reapplied for the rates clearance certificate. At the time of writing this report the outcome of the rates clearance was still pending.
Nomsa* is 40 years old and currently unemployed. In November 2018 she approached the TSC for assistance with transferring her deceased grandmother’s property into her name. Her grandmother had received an RDP house in Khayelitsha in 1997 where she had lived until her death in 2018.

Nomsa’s grandmother did not have a will, and in line with the rules of intestate succession, ownership of the property passes to Nomsa’s mother who is the sole heir of the deceased estate. Nomsa’s mother lives in the Eastern Cape. She is happy to renounce her rights to the estate so that the house can be transferred to Nomsa, who is the current occupant.

The process of renouncing a right to an inheritance is relatively straightforward. It requires Nomsa’s mother to sign one document witnessed by one other person. Nomsa took the documents to her mother to sign in the Eastern Cape.

The primary challenge with this case is the value of the property. According to the latest valuation roll, the property is worth R363 000, exceeding the small estates threshold under which the Master of High Court can appoint an executor to wind up the estate at no cost. Standard legal costs to wind up this estate are 3.5% of the estate value (R12 705) plus disbursements for advertising in a national newspaper and the government gazette (R2 000) plus Master’s Office costs (R600). In addition, absent the TSC and its partner conveyancers who offer their services at no cost, there would be the costs of transferring the property from the estate to the client of at least R23 075 in line with the prevailing tariff.

To assist Nomsa, the TSC investigated the possibility of accessing state subsidised legal assistance to wind up the estate through Legal Aid. However according to the consultant we spoke to, Legal Aid will only take on an estate transfer where the heir is a minor. ProBono.org could not assist with winding up the estate because the value of the property exceeds R300 000, their internal limit.

The TSC approached a lawyer who agreed to wind up the estate at a reduced fee of R9 500 plus disbursements of R2 600. We discussed the costs with our client who agreed to a payment plan, starting with an amount of R2 600 upfront to cover disbursements.

Winding up higher-value estates is a long process. Where the estate is valued below R250 000, clients can report the deceased estate at their local Magistrate Court and the Letter of Authority (equivalent to the Letter of Executorship) can be issued on the same day. In Nomsa’s case it took 83 working days for the attorney to receive the Letter of Executorship.

In addition, there is no need to prepare and advertise the Liquidation and Distribution (L&D) account. The preparation of the L&D account where the assets of the estate comprise a single property is relatively simple. However, lawyers must advertise the estate in the Government Gazette and a newspaper circulating the area in which the deceased lived.

An initial advert calls for creditors in the estate to submit their claims within 30 days prior to drawing up the L&D account. Once the account has been drawn up, a subsequent advert notifies interested parties to review the L&D account at the Master’s Office for a period of 21 days. Only then can the attorney distribute the assets of the estate. Nomsa’s case has been on our books for 339 working days, approximately 16 months. A summary of key milestones is presented on the following page.

As at March 2020 the L&D account and transfer documents\(^*\) were signed by Nomsa and her mother in the Eastern Cape. The next step is for the signed L&D account to be submitted to the Master’s Office for inspection. Progress on this stalled due to the closure of the Master’s Office with to the nationwide lockdown, but due the recent reopening of the Master’s Office it is expected to be picked up again. However, given the TSC’s experience with accessing certified copies of the next-of-kin affidavit (J192) from the Master’s Office, the timelines could vary significantly (anything from 21 to 70+ days). Given these uncertainties, it is difficult to predict how long it will take to resolve the matter. Another four to six months is a reasonable guess.

Note: *All client names have been changed

\(^*\) The property transfer process (instructing conveyancer and preparation of transfer documents) is initiated before the deceased estate process is finalised as a provision for the transfer cost and rates clearance must be included in the L&D account.
Optimising the process of winding up deceased estates will require the active participation of the Department of Justice (DoJ). As a first step, the small estates threshold needs to be reviewed, preferably with a mechanism to adjust this threshold automatically in line with property price inflation. In addition, the capacity of the Master’s Office and magistrate’s courts should be assessed and increased where required to improve the turnaround times on winding up deceased estates. The functionality of the Paperless Estate Administration System (PEAS) could also be enhanced to notify applicants when documents are ready for collection.

The TSC may be well-positioned to assist the Master’s Office with processing some requests and/or handling some components of the process. However, to date the TSC has had no direct engagement with the Department of Justice or the Master’s Office. Going forward, the TSC will therefore initiate formal discussions with these organisations to explore opportunities to collaborate and pilot new solutions.

In the long run, a fully digital estate administration process could enable estates to be reported online with data extracted automatically from the Department of Home Affairs databases removing the need for paper-based processes.

### 3.1.3 "X" properties

A particularly challenging category, termed "X" in the case load chart in Figure 12 above includes disputed properties that were allocated to beneficiaries in the early 1990’s and registered in the Deeds Office, but which were occupied by other households. Registered owners have never lived on the properties, and in some cases are unaware that they are registered owners. While the circumstances under which households came to occupy these properties are disputed (according to City officials, the properties were forcibly and illegally occupied, while households in occupation say they were told to move to the properties by the City), regularising ownership is complex from a legal perspective.

It is estimated there are roughly 1 200 such properties in Makhaza, Khayelitsha, accounting for roughly a quarter of all registered properties in the vicinity of the TSC.

<table>
<thead>
<tr>
<th>Day</th>
<th>Date</th>
<th>Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2018/11/22</td>
<td>Client signs up and submits relevant documentation to TSC</td>
</tr>
<tr>
<td>47</td>
<td>2019/02/25</td>
<td>TSC reviews case &amp; establishes way forward</td>
</tr>
<tr>
<td>59</td>
<td>2019/02/12</td>
<td>TSC drafts estate documents to arrange signature</td>
</tr>
<tr>
<td>72</td>
<td>2019/03/01</td>
<td>Client and mother in Eastern Cape sign estate documents</td>
</tr>
<tr>
<td>78</td>
<td>2019/03/21</td>
<td>TSC enquires about pro bono assistance for client with partner conveyancing firm, they don’t have an estate department so can’t assist</td>
</tr>
<tr>
<td>100</td>
<td>2019/04/20</td>
<td>TSC enquires about pro bono estate assistance from Probono.org, they can’t assist because value of property is above threshold</td>
</tr>
<tr>
<td>112</td>
<td>2019/04/26</td>
<td>TSC discusses cost of transfer with client, client wants to proceed on a payment plan</td>
</tr>
<tr>
<td>124</td>
<td>2019/04/30</td>
<td>TSC finds an attorney prepared to assist with winding up the estate at a reduced fee</td>
</tr>
<tr>
<td>115</td>
<td>2019/05/01</td>
<td>TSC assists with signature of attorney’s client mandate form required to report estate at Master’s Office</td>
</tr>
<tr>
<td>118</td>
<td>2019/05/06</td>
<td>Client delivers outstanding document required to report estate at Master’s Office</td>
</tr>
<tr>
<td>121</td>
<td>2019/05/09</td>
<td>TSC reports estate at Master’s Office</td>
</tr>
<tr>
<td>167</td>
<td>2019/07/12</td>
<td>Master’s Office requests municipal valuation, TSC sends to attorney to submit</td>
</tr>
<tr>
<td>203</td>
<td>2019/09/04</td>
<td>Attorney receives letters of Executorship from Master’s Office and proceeds to advertise estate for creditors to come forward</td>
</tr>
<tr>
<td>258</td>
<td>2019/11/18</td>
<td>Attorney advises that estate has been advertised and she is ready to draw Liquidation &amp; Distribution (L&amp;D) account</td>
</tr>
<tr>
<td>258</td>
<td>2019/11/18</td>
<td>TSC drafts renunciation of inheritance by mother, client collects to arrange signature with mother in Eastern Cape</td>
</tr>
<tr>
<td>258</td>
<td>2019/12/18</td>
<td>TSC instructs conveyancer on estate transfer</td>
</tr>
<tr>
<td>309</td>
<td>2020/01/28</td>
<td>L&amp;D account ready for the clients to sign, client to arrange signature with mother in Eastern Cape</td>
</tr>
<tr>
<td>312</td>
<td>2020/02/25</td>
<td>Transfer documents prepared for signature by client and mother</td>
</tr>
<tr>
<td>339</td>
<td>2020/03/09</td>
<td>Client returned signed transfer documents and L&amp;D account</td>
</tr>
</tbody>
</table>

Figure 21: Key steps and timelines to wind up deceased estate >R250 000 and transfer property
It has been the unenviable task of the Tenure Administration and Transfers Department in the Human Settlements Directorate of the City of Cape Town to resolve these cases. A recent legal opinion dated October 2019 recommends a solution that would apply nationally. 30 This would not only provide a remedy in the case of Makhaza but would also enable resolution in other similar situations across the country. The recommendation suggests an addition of Section 10C to the Housing Act requiring beneficiaries to take occupation of their subsidy properties, failing which property ownership defaults to the Province. The opinion notes; “In adhering to the doctrine of separation of powers and their own institutional limitations, Courts are astute not to be drawn into matters of policy in circumstances where other arms of Government are capable of adopting a remedy for themselves, and indeed constitutionally required to do.”

Box 8: Proposed section 10C of the Housing Act

“(1) Notwithstanding any provisions to the contrary in any other law, it shall be a condition of every housing subsidy, as defined in the Code, granted to a natural person in terms of any national housing programme for the construction or purchase of a dwelling or serviced site, that such person shall take occupancy of his or her dwelling or site within a reasonable period after it being allocated to him or her.

(2) In the event that a person contemplated in subsection (1) fails to occupy the dwelling or site accordingly, the provincial housing department in whose area the dwelling or site falls shall endorse in its records that the person has not taken occupation of the property and is entitled to remain on a waiting list of beneficiaries requiring subsidised housing.

(3) When the person contemplated in subsection (1) fails to occupy the dwelling or site accordingly, the relevant provincial housing department shall be deemed to be the owner of the property and application must then be made to the Registrar of Deeds by the provincial housing department for the title deeds of the property to be endorsed to reflect the department’s ownership of that property.

(4) No purchase price or other remuneration shall be paid to the person contemplated in subsection (1) in such circumstances, but such person will be eligible for obtaining another state-subsidised house, should he or she qualify therefore.

(5) This section applies to all housing subsidies or related measures intended to give effect to the right to have access to adequate housing as contemplated in section 26 of the Constitution of the Republic of South Africa, 1996 irrespective of the date of commencement of this section or this Act.”

CAHF has engaged with senior policymakers on this proposal. They have indicated that this remedy could be explored within the context of a broader policy review which will take two to three years. That review may or may not accept the proposed amendment.

Alternatively, it may be possible for these cases to be adjudicated by a commissioner appointed under the LTAA. But that too will be a time-consuming process.

While a change to the Housing Act would regularise ownership in favour of current occupants, it is by no means the case that a commissioner would rule the same way, particularly if beneficiaries were, in fact, prevented from occupying their homes by invaders. Further, in light of feasibility of an alternative, policy-related remedy, the DARDLR may well resist the inclusion of these cases within the scope of a commissioner, if one is ever appointed. At the time of writing this report, there was no clarity on a way forward.

30 In 2017, a legal opinion indicated two remedies. The first was to reach out to original beneficiaries to see if they would agree to transfer their properties to the City for “reasonable compensation”. The second option was “to expropriate the sites in terms of section 9(3) of the Housing Act”. A subsequent opinion suggested a solution similar to Section 10A of the Housing Act. Because the allocation and occupation of properties occurred prior to the effective date of the ACT, a further legal opinion issued in December 2018 suggested the Province apply to the High Court for a declaratory order authorising such a remedy.
3.2 Property purchases

While the initial vision of the Transaction Support Centre was to support transactions, there have, in fact, been relatively few cases of this nature. Nevertheless, the experience of the TSC with FLISP transactions and with waiver applications offers useful lessons.

3.2.1 FLISP transactions

South Africa’s national housing subsidy policy includes a Finance-Linked Subsidy Programme (FLISP) that provides a capital grant to households earning between R3 501 and R22 000 per month to facilitate a mortgage-financed property. The eligibility criteria for the FLISP subsidy are similar to those for other housing subsidy programmes; the applicant must never have received a subsidy before and must have dependents. In addition, the FLISP subsidy requires that the purchase of the property be financed with a mortgage.31

Since July 2018 the TSC has facilitated six FLISP transactions. This is worth emphasising: mortgage lenders have participated in providing mortgage finance for residential property transactions Khayelitsha. However, the TSC has engaged with 50 prospective applicants – and so has not been able to assist the majority. Most potential FLISP applicants have not qualified for the subsidy due to mortgage eligibility (poor credit scores or limited affordability). Others have already received a subsidy, or they do not meet one of the other FLISP criteria. The status of potential FLISP clients is summarised below.

![Figure 22: Status of potential FLISP applicants from the TSC](image)

<table>
<thead>
<tr>
<th>Failed pre-qualification:</th>
<th>30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failed on mortgage eligibility</td>
<td>21</td>
</tr>
<tr>
<td>Failed on subsidy eligibility criteria (e.g. already have had a subsidy, don’t have dependants)</td>
<td>7</td>
</tr>
<tr>
<td>Not within 2 year retrospective FLISP timeframe</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pass pre-qualification but process stalled:</th>
<th>14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Looking for property to purchase</td>
<td>12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Successful applications:</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved &amp; paid out</td>
<td>3</td>
</tr>
<tr>
<td>Approved, waiting payment</td>
<td>3</td>
</tr>
<tr>
<td>Property rejected by bank</td>
<td>1</td>
</tr>
<tr>
<td>Property doesn’t have title deed</td>
<td>1</td>
</tr>
</tbody>
</table>

Problems with over-indebtedness and impaired credit histories are well known and documented in this market. While debt counselling is supposed to assist these clients, analysis of credit bureau data indicates that just 20% of clients who are in arrears and therefore, by some visible measure, debt distressed, are actually enrolled for debt counselling. The limited reach of debt counselling is widely recognised and prompted an amendment to the National Credit Act passed in 2019. This amendment outlines for an alternative intervention for borrowers who earn up to R7 500 per month to be implemented by the National Credit Regulator. However, given the limited capacity of the National Credit Regulator, the very ambitious objectives of the amendment, as well as the limited market scope of the intervention, it is unlikely that lower-income consumers will be able to access relief anytime soon.

Ideally the TSC would want to refer these clients to a sibling service – a free, community-based debt counselling centre, but no such offering exists and it is not clear that anyone is inclined to build one.

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31 The FLISP policy has been amended to allow for the subsidy to be linked to other forms of non-mortgage finance – however, the mechanism for effecting this link has not yet been finalised and it is unclear how the process would work.
The TSC could theoretically add this service to its current offering. It is clearly complementary, focusing on the liability side of the balance sheet where housing is the dominant asset. In addition, housing journeys are clearly contingent on liquidity, and severe liquidity constraints are plausibly key in creating incentives for some to sell their subsidy houses. The challenge is principally one of capacity; at present the TSC does not have the skills, systems or relationships to offer this service.

Beyond financial health, a further constraint is that many potential buyers are not aware of the FLISP. Perhaps more critically, estate agents who facilitate sales are aware of the FLISP, but do not encourage buyers to apply because sellers require a more rapid payment of funds than a mortgage-enabled FLISP will allow, and have a strong preference for cash (see examples of properties advertised as “cash sales” below). The strong preference on the part of sellers for cash may indicate severe liquidity distress. In such cases, the sale of a house (typically a subsidy property) is an extreme measure that may create more distress for the seller, if not financial, then certainly social. Alternatively, the preference for cash may reflect a skepticism on the part of sellers that any alternative is actually possible. In these cases, it may be possible to convince some sellers to wait, or to encourage the financial sector to develop bridging finance mechanisms.

Figure 23: Example of “cash-only” property adverts

FLISP transactions currently take too long to be appealing to sellers and estate agents working in the low-value property market. For the few FLISP transactions that the TSC has facilitated, the process has taken up to 88 days from the date of application to the FLISP pay-out. A particular point of concern for sellers involved in FLISP transactions is that the FLISP payout is not always timed together with the mortgage payment. The FLISP transaction timelines of two TSC clients are included in Figure 24, as seen in the second case study, the seller received the FLISP payout a month after receiving the mortgage payment from the bank.

While the FLISP processes can be optimised, delays with regard to the entire process are not always or only a function of the performance of the Province. According to one bank interviewed as part of initial discussions prior to the launch of the TSC, it typically takes almost 80 days from the time an application is received until the mortgage is disbursed. These delays occur because buyers and sellers need to obtain various documents and certificates (including title deeds, waivers, rates clearance and electrical compliance certificates). In addition, valuers need to inspect the property, and in-person meetings are required with conveyancers and bond attorneys. The final outcome of a FLISP subsidy awarded on a resale transaction requires coordination across multiple parties including the Province, municipalities, the buyer, the seller, conveyancers, mortgage lenders and bond attorneys.
**Figure 24: TSC FLISP case studies**

**Case study:** Amanda  
Household income: R7 000 pm  
Purchase price: R120 000  
FLISP subsidy: R103 934 (87% of purchase price)  
Value of mortgage: R16 066  
Days from date of online application to FLISP pay-out: 75 working days

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
<th>Stage</th>
</tr>
</thead>
<tbody>
<tr>
<td>June</td>
<td>04/06/2019</td>
<td>• Application submitted online</td>
</tr>
<tr>
<td></td>
<td>05/06/2019</td>
<td>• Hard copy submitted to DHS</td>
</tr>
<tr>
<td>July</td>
<td>01/07/2019</td>
<td>• FLISP approved</td>
</tr>
<tr>
<td>Aug</td>
<td>29/08/2019</td>
<td>• Transfer lodged in Deeds Office</td>
</tr>
<tr>
<td>Sept</td>
<td>10/09/2019</td>
<td>• Transfer registered in Deeds Office</td>
</tr>
<tr>
<td></td>
<td>12/09/2019</td>
<td>• DHS advise FLISP payment will be made in 4 weeks</td>
</tr>
<tr>
<td></td>
<td>19/09/2019</td>
<td>• TSC query 4 week payment run, DHS advise it should be one week</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Mortgage payment received by seller</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• FLISP payment received by seller</td>
</tr>
</tbody>
</table>

**Case study:** Zandile  
Household income: R8 300 pm  
Purchase price: R300 000  
FLISP subsidy: R103 934 (35% of purchase price)  
Value of mortgage: R147 000  
Own cash contribution: R50 000  
Days from date of online application to FLISP pay-out: 85 working days

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
<th>Stage</th>
</tr>
</thead>
<tbody>
<tr>
<td>June</td>
<td>04/06/2019</td>
<td>• Application submitted online</td>
</tr>
<tr>
<td></td>
<td>05/06/2019</td>
<td>• Hard copy submitted to DHS</td>
</tr>
<tr>
<td>July</td>
<td>01/07/2019</td>
<td>• FLISP approved</td>
</tr>
<tr>
<td>Aug</td>
<td>29/08/2019</td>
<td>• Transfer lodged in Deeds Office</td>
</tr>
<tr>
<td>Sept</td>
<td>10/09/2019</td>
<td>• Seller frustrated process taking so long, buyer gives her R100 000 of purchase price in cash to not lose sale</td>
</tr>
<tr>
<td></td>
<td>12/09/2019</td>
<td>• DHS advise FLISP payment will be made in 4 weeks</td>
</tr>
<tr>
<td></td>
<td>19/09/2019</td>
<td>• TSC query 4 week payment run, DHS advise it should be one week</td>
</tr>
<tr>
<td></td>
<td>Oct 04/10/2019</td>
<td>• Mortgage payment received by seller</td>
</tr>
<tr>
<td></td>
<td>Oct 04/10/2019</td>
<td>• FLISP payment received by seller</td>
</tr>
</tbody>
</table>
The process to facilitate a FLISP transaction involves several steps including an assessment of the buyer’s eligibility for the FLISP subsidy and their mortgage eligibility and affordability. The TSC has built relations with a few estate agents working in the market to find suitable stock for clients to buy but also actively encourages clients to find properties themselves on online property listing websites or through local networks. The TSC plays a very active role throughout the mortgage application process and works closely with the lender to answer any questions and provide additional information to motivate the lender to accept applications that are perhaps outside of their normal lending terms. For example, the TSC was able to motivate FNB to award a mortgage of R16 000 which enabled the client to access a capital subsidy from Government and purchase her first home. More information on the FLISP transaction process is provided in Figure 25.

Table 4: Document checklist for FLISP transactions

<table>
<thead>
<tr>
<th>Buyer</th>
<th>Seller</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Mortgage application</td>
<td>1. Copy of ID</td>
</tr>
<tr>
<td>2. Copy of ID</td>
<td>2. Copy of spouse’s ID</td>
</tr>
<tr>
<td>3. Copy of spouse’s ID</td>
<td>3. Copy of marriage certificate or Final order of divorce (where applicable)</td>
</tr>
<tr>
<td>4. Copy of marriage certificate or Final order of divorce (where applicable)</td>
<td>4. Original Title Deed</td>
</tr>
<tr>
<td>5. Credit report</td>
<td>5. Copy of recent rates bill</td>
</tr>
<tr>
<td>6. Proof of income</td>
<td>6. Proof of address</td>
</tr>
<tr>
<td>7. Bank statements</td>
<td>7. Income tax number</td>
</tr>
<tr>
<td>8. Proof of address</td>
<td>8. Pre-emptive waiver (if applicable)</td>
</tr>
<tr>
<td>9. Income tax number</td>
<td></td>
</tr>
<tr>
<td>10. Mortgage application form including affordability assessment</td>
<td></td>
</tr>
<tr>
<td>11. FLISP application. As above, including:</td>
<td></td>
</tr>
<tr>
<td>a. Children’s birth certificates (if applicable)</td>
<td></td>
</tr>
<tr>
<td>b. Bond approval letter</td>
<td></td>
</tr>
<tr>
<td>c. Signed deed of sale</td>
<td></td>
</tr>
</tbody>
</table>
Figure 25: FLISP property transaction sales process

1. **Client sign up**
   - Electronically capture client information and case details
   - Give client document checklist
   - Scan any documents submitted on sign up

2. **Assess affordability / eligibility**
   - TSC reviews client’s bank statements to assess affordability
   - TSC conducts credit check
   - TSC assesses eligibility for FLISP subsidy

3. **Find property**
   - TSC and client use local networks, online property listings and estate agents to find properties
   - TSC conducts checks on property – title deed in order, no building encroachments etc.
   - TSC assists seller with application for waiver (if applicable)
   - TSC assists seller with application for lost title deed (if applicable)

4. **Sign sale agreement**
   - TSC prepares sale agreement and arranges signature of buyer and seller

5. **Submit bond & FLISP application**
   - TSC assists client in filling in bond application forms
   - TSC submits form to bank and actively tracks progress of application
   - TSC assists clients in filling in subsidy application documents
   - TSC submits documents to DHS and actively tracks progress of application

6. **Instruct conveyancer**
   - TSC instructs conveyancer on sales transaction and submits all supporting documents
   - Conveyancer prepares transfer documents for signature
   - TSC arranges signature of buyer and seller
   - Conveyancers apply for rates clearance and notifies TSC
   - TSC communicates with seller on any amount due – seller pays or enters into payment plan with City
   - Or, TSC refers seller to apply for indigent rates relief
   - Seller submits proof to TSC & passed onto conveyancers
   - Conveyancer applies for transfer duty clearance*

7. **Rates & transfer duty clearance**
   - Conveyancers lodge transfer at Deeds Office
   - Title deed registered
   - Title deed received from Deeds Office and handed over to client
   - TSC prepares will for client

8. **Transfer property**

* In South Africa, properties valued at R1,000,000 or less are exempt from paying transfer duties. Most of the properties the TSC deals with fall within this threshold, however, a transfer duty clearance certificate is still required.

A more efficient process, enabled by better technology and shared platforms, could minimise coordination failure and enable parties including the lenders and the Province to optimise their response times. In addition, it may be possible to create more streamlined processes for pre-approved mortgage applicants who wish to purchase properties in pre-approved areas or zones.

To open the market to more FLISP transactions, it may be possible to convince the financial sector to develop bridging finance mechanisms that allow sellers to receive part payment upfront and the rest on payment of the subsidy and mortgage. However, this will require certainty that the subsidy will be paid on or before a given date. Thus, aside from driving efficiencies and reducing delays, it is critical that variance around key processes is reduced.
3.2.2 Pre-emptive waiver applications

In line with Section 10A of the Housing Act, owners of RDP properties who wish to sell their properties within eight years of acquisition must obtain permission from the Provincial Department of Human Settlements. Title deeds for government subsidised housing in South Africa therefore include a resale restriction that stipulates that beneficiaries cannot sell their houses for the first eight years after occupation. The Acting Chief Registrar of Deeds issued a circular in 2005 that requires officials at the Deeds Office who inspect a title deed before transfer to ensure that any transaction within eight years of transfer is accompanied by a waiver from the Province which gives the property owner permission to sell his or her home. In practice, even where the pre-emptive clause has lapsed, the subsidy beneficiary still requires written consent from the Province to sell the house but according to the Department the sale should be “unconditionally supported”.

In Cape Town, the waiver application process is not excessively complex for property owners to navigate. Where property owners are uncertain of the requirements, professionals are available to assist for a fee. According to conveyancers operating in this segment of the market, the standard costs to submit such an application can be up to R1 000.

The waiver is issued at the discretion of an official who must be convinced that the seller has good reason to sell as outlined in a sworn affidavit and is not just trying to ease a severe liquidity constraint. Good reasons for selling (or borrowing against) a property as outlined by policy are summarised in the box below.

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**Box 9: Conditions under which the WC Department of Human Settlements will consider a waiver for the eight-year pre-emptive clause**

- Where beneficiaries need to apply for funding and register a mortgage against their property in order to improve their properties
- Where beneficiaries need to relocate in order to:
  - Improve their living and economic circumstances
  - Take up a new place of employment in another area
  - Move themselves and their families to a safer area (if they have been victims of crime)
- In cases where beneficiaries want to sell due to relocation, certain conditions must be met including:
  - The buyer is South African and competent to contract
  - The buyer does not own and has never owned fixed property before
  - The seller has lived on property for at least two years after effective date of sale
  - The seller must be improving on his/her current living standards, or prove that it is a matter of extreme detriment to the applicant, if not approved
  - The municipality supports the sale if the property is being sold within the first five years of the effective date of sale
  - The seller submits an affidavit indicating they fully understand that they will no longer qualify for any state housing assistance in the future

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32 The Housing Amendment Act, 2001 (Act No. 4 of 2001) was introduced in part to “provide for the regulation of the sale of state-funded housing”. The Act introduced two clauses, Section 10A and 10B. Section 10A stipulates that housing subsidy recipients may not sell their dwellings or sites “within a period of eight years from the date on which the property was acquired by that person unless the dwelling or site has first been offered to the relevant provincial housing department”. The Act allows the MEC of housing to grant an exemption, commonly known as a waiver. The intentions of the policy are to protect beneficiaries, who are by definition poor, from selling their properties. Aside from the risk that beneficiaries who obtained their houses for free might fail to realise full value of their housing assets, policymakers are concerned beneficiaries might move back into informal dwellings, and require further state housing assistance.

33 That circular provides the wording for a paragraph that conveyancers should include on title deeds of RDP properties: “In terms of section 10A of Act No. 107 of 1997 the within mentioned property is subject to the condition that it shall not, without the consent of the relevant provincial housing department, be sold or otherwise alienated within a period of eight years from the date of transfer, unless it has first been offered to the relevant provincial housing department”.

34 Application for pre-emptive right waivers document received from Asset Management / Pre-emptive Right Western Cape Department of Human Settlements.
No doubt the official knows the seller has a material incentive to lie if he or she is, in fact, liquidity constrained. The official might therefore be inclined to treat any affidavit with some skepticism. But the official cannot investigate all matters, and might therefore accept or reject an application with a targeted ratio of accepted to declined applications in mind, thus avoiding any risk of investigation for failing to protect sellers (on the one hand) or curtailing formal market participation (on the other).

Aside from the necessary discretion that must be applied, there is some confusion about practical issues regarding critical dates relating to transfer and acquisition as well as the timing of the subsidy itself.

While the formal transfer of a property is a clear mechanism through which one can acquire property it may, under some circumstances, be possible to acquire property through occupation, particularly if that occupation is officially sanctioned by the State - as it is when subsidy beneficiaries are allocated properties. In light of the widespread administrative failure that plagues the subsidy programme, the date of acquisition (as stipulated in the Act) and the date of transfer (as stipulated in the Chief Registrar’s circular) often do not align. Primary transfer cases, as outlined above, are an example of this. While the acting registrar may well have been aware of this discrepancy when she or he drafted the circular, there was good reason to select the date of transfer as the relevant date; unlike the date of occupation, the date of transfer is at least administratively visible and so actionable. That said, the circular puts the beneficiary of a property where there was delayed transfer in a compromised position; he or she might have to wait much longer than eight years before being able to transact.

A further complication arises when the subsidy itself is provided in stages, with the beneficiary initially receiving a serviced site, followed some years later by a top structure. It is not clear at which stage of the property development process the clock should start ticking. While the beneficiary would be deemed to have acquired the land on transfer, he or she would only have acquired the house once it has been built. A particularly long, and ultimately aborted, sales process involved just these issues.

**Box 10: Case study - pre-emptive waiver application**

We met Sarah* through one of our clients who wanted to buy her house in November 2019. The client’s employer had offered to purchase a house for her and was willing to pay the asking price of R280 000 in cash. Sarah lives in Blue Downs on a 105m2 property that she first took occupancy of in 2009. Sarah received the property as a serviced site, a plot of land with access to municipal services – water, electricity, and a flush toilet. In 2017, eight years after taking occupation of the land, transfer took place and the title deed was registered in her name. According to Sarah she never received the actual title deed. In the same year (2017), Sarah was approved for a consolidation subsidy to build a top structure, a formal dwelling, on her plot of land and in 2018 the build was completed.

**Figure 26: Sarah’s RDP housing journey**
We offered to assist Sarah with finding her title deed in the City, or applying for a certified copy if we were unsuccessful. We also offered to assist Sarah with the application for the waiver as part of the process of assisting our client to purchase her property. Sarah’s waiver application indicated that she wanted to relocate to the Eastern Cape. Perhaps somewhat naively we thought we could bolster her request by highlighting to the provincial Department of Human Settlements official reviewing this case that in fact, Sarah had been in officially sanctioned occupation of the property since 2009 and had signed a sale agreement in that year. However, the official insisted that Sarah provide further proof that she had been in occupation of the property since 2009. The TSC attempted to obtain proof of occupancy on behalf of Sarah from the City of Cape Town (‘the City’) with no success. Sarah also approached the local ward councilor for some kind of official evidence that she had been in occupation of the property since 2009, but he is both honest and relatively new to the area and could only verify that she currently lives on the property, not that she had been there since 2009. The official at the provincial department suggested that we go back to the City who could easily provide this evidence. Where households receive a rates account this would be entirely reasonable, but in this instance the property had not been transferred and no rates account was issued by the City in 2009. The TSC was at a loss as to what evidence Sarah could produce.

Sarah withdrew from the transaction before we could resolve the waiver issue. But subsequent to the termination of the sale we searched the Housing Subsidy System (HSS) and discovered the evidence the official might have been after. Those records clearly show Sarah’s long history on the property.

However, the records would also show the date of the top structure completion, which might have restarted the clock. We are still waiting for clarity on that from the Department.

The plot thickens

The TSC team was always a little skeptical of this sale principally because the agent, an intern working under a registered principal, wanted to include a commission of R60 000 (21.4% of the property price) in the sale agreement. When the TSC asked why the commission was so high the agent told us that the property owner (Sarah) was, in line with the deepest fears of policymakers, severely liquidity constrained and had taken a R30 000 bridging finance loan from the agent to be offset against the proceeds of the sale.

The agent was increasingly impatient with the waiver application process, insisting that she could easily obtain the waiver and that we should kindly hand over the money so that the deal could be concluded. When we asked her for the name of the official she was working with at the Department, she forwarded the name of the same official with whom we’d engaged, who was not at all forthcoming with the waiver in our interactions.

After a number of weeks of negotiation, Sarah signed a sale agreement with another buyer. This came to our attention when we were notified by a conveyancer who had been instructed on a transfer for the same property. He was unable to proceed because our VA application for the original title deed was still pending.

While Sarah is in breach of the original sale agreement, and our client (the original buyer) could have insisted on the sale, we advised our client to find another property.
The title deed backstory is an interesting one itself. Sarah claimed she never received a title deed from the City of Cape Town. It is possible to apply for a certified copy of a title deed from the Deeds Office (also referred to as a “VA application”) if a deed has been lost, destroyed, defaced or damaged, but that comes at a very real cost to the client. According to a 2019 amendment to regulation 68(1) of the Deeds Registry Act, 1937 (No. 47 of 1937), applications for certified copies of title deeds made after 1 January 2020 will involve several steps, including:

- A conveyancer must submit a request for a VA copy at the Deeds Office prior to the advertisement of the notice
- A notice of intention to apply for a certified copy of a title deed must be advertised in an issue of a local newspaper (“a newspaper circulating in the area in which the land is situated”) following a specific format (if the notice is in the incorrect format it can be rejected by the Registrar and the process must be restarted) – see sample notice
- The Registrar must be advised in writing that the notice has been published
- On receipt of the written notice, the Registrar will allow interested persons to view the deed being advertised and submit any objections in a two-week period, after which the conveyancer can proceed with the lodgement of the application

VA applications currently cost TSC clients between R1 200 and R1 500, to cover the cost of advertising (approximately R720 to R1 000 depending on the newspaper) and the Deeds Office cost of R436.

As mentioned, the regulation requires a two-week period from the date of publication of the notice during which any interested person may object to the issue of the certified copy. The intention of the notice and inspection period is to reduce fraudulent transactions. It is debatable whether advertising in the classified section of a local newspaper will achieve this objective.

Where title deeds cannot be located due to administrative failure there is no recourse for subsidy beneficiaries to claim back the cost of VA applications. It is simply impossible for beneficiaries to prove they did not receive a title deed, and it appears the burden of proof lies with them.

We attempted to locate Sarah’s title deed or at least get some evidence that the title deed was handed over to her. This was a time-consuming and ultimately unsuccessful endeavour as outlined in the graphic on the next page, although it did provide the team with an opportunity to meet in person with officials in the Urban Management Department which is now tasked with handing out title deeds across the City of Cape Town.

Figure 27: Sample VA application advert

It is very possible that Sarah may have lost her title deed and that she should rightly pay for a copy. It is also possible that she did not. That there is no evidence or track record of what happens to title deeds as they move from conveyancers to contractors to departments within the City is clearly sub-optimal. A title deed is arguably one of the most important personal documents for property owners. With all the available technology and sophisticated systems currently available to monitor and track the movement of goods and services around the world, there is no good reason the City cannot efficiently track the movement of a title deed through the housing delivery process. At the most basic level a barcode or QR code could be added to each title deed issued for state-funded properties and scanned at each hand-over point. Aside from protecting this valuable document, such a system would also help the City pinpoint potential bottlenecks in the title deed delivery process.

Note: *Client name changed

3.3 Primary transfers

There are an estimated 1.1 million state-subsidised housing units that have never received primary transfer and therefore do not have title deeds. Beneficiaries of these properties have no formal proof of ownership and cannot legally sell their properties or access any finance or capital subsidies to build or extend their properties. Likewise, beneficiaries cannot submit building plans or engage the municipality on rates because they are not the registered owners. In addition, if the beneficiary dies heirs cannot inherit their properties, unless the beneficiary signed a sale agreement with the City of Cape Town and had a valid will in place.

The TSC has seen a number of walk-in primary transfer cases. While there is a dedicated grant and a process to deal with these cases at a project level, there appears to be very limited capacity to
respond to requests for formalisation on a case-by-case basis, even where the TSC has offered to fund the transfer. This is well illustrated by Christine’s case study below. The case study also highlights the knock-on effects of the primary transfer backlog for the City and its ability to govern and sustainably provide services.

Box 11: Case study - informal cash sale coupled with primary transfer problem

Background

Christine is a 48-year-old single mother of two. She works as a night nurse and lives in an RDP house in Delft which she purchased informally in 2010 for R50 000 paid in cash. This is her third property she has owned in Cape Town. Her first house was an RDP house she received in 2003 in Nyanga. She subsequently traded this house, informally, for a house in Delft, which she then sold informally to purchase her current dwelling. She has no documentation regarding this latest purchase and does not have a title deed for the property.

Christine has asked the seller repeatedly for the title deed. In this market, sellers often provide buyers with hard copies of vital documents as proof of a transaction without signing a deed of sale or engaging a conveyancer to register the transaction formally.

Since buying the property in 2010, Christine has built three rental units at the back, financed by savings. She did not submit building plans for these units. She does not have lease agreements with her tenants, and unsurprisingly does not report rental income to the tax authorities. Christine does not receive a municipal account for services such as water, sewage or refuse collection. She is essentially invisible on City systems, only appearing as a subsidy beneficiary and property owner of the initial house she received in 2003 in Nyanga, which she has not lived in for 15 years, and which she regards as belonging to someone else.

Seller approaches Christine for more money

In March 2019, Christine approached the TSC for assistance. The original owner of her current house (the seller) had come back and asked Christine to pay another R150 000, in exchange for which she would provide the title deed. According to the seller, they had never agreed on the final price, and the R50 000 Christine had paid in 2010 was insufficient in light of the current value of the property.

The TSC investigated the ownership status of the property and determined that the seller could not possibly have a title deed for the property as no primary transfer had ever occurred. In addition, no primary transfer has taken place on the property where the seller now lives, a few doors down from Christine’s. Both of these properties were built by the Housing Development Agency (HDA) as part of the N2 Gateway, a flagship subsidy project in Cape Town. As the image below indicates, several other properties (bordered in green) in the immediate vicinity of Christine’s house have also never been transferred.

Figure 29: City Map Viewer image: Christine’s house and the seller’s house

Registered properties
Not yet registered

Footnote

36 The Title Deeds Restoration Programme, which is managed at the municipal level, typically takes an area-based approach, proactively enumerating households and then proceeding with bulk transfers.

37 It is worth acknowledging the important service provided by the City of Cape Town’s City Map Viewer. The website provides free access to high resolution aerial imagery across the City of Cape Town which is overlaid with an array of useful property information including erf numbers, street names, property boundaries, and a property registration indicator. Properties can be searched by erf number or street address. There are several additional layers that can be applied to the imagery including political and administrative boundaries in an area, public transport routes, and healthcare facilities. The latest available imagery is from 2018. The site can be accessed at: https://citymaps.capetown.gov.za/EGISViewer/
In line with the Provincial and City regularisation policy, the seller does not, in fact, have any ownership claim on the property. While she was the original beneficiary, she did not sign a deed of sale with the municipal or provincial authority (or in this case the HDA). In addition, she has sold the property informally and is no longer in occupation.

The policy would therefore withdraw the subsidy from the seller and seek to regularise Christine as the owner with the cooperation of the HDA who would need to counter-sign the deed of sale.

The HDA had no knowledge of the Provincial and City regularisation policy.

The TSC therefore set up a meeting in April 2019 between the manager of Support Services at the HDA, the Programme Manager of Tenure Administration and Transfers in the Human Settlements Directorate of the City of Cape Town and the manager of the Title Restoration Project in the Western Cape Department of Human Settlements to review the policy, determine the next steps to resolve Christine’s case and identify opportunities to apply the policy more broadly across properties developed by the HDA where primary transfer has not occurred. During that meeting the City official offered to mediate a meeting between Christine and the seller as a first step. This approach was agreed by all present.

After the meeting, the TSC followed up regularly with the HDA official by email and telephonically. However, by September there was still no progress.

The HDA then assigned a new official to deal with its primary transfer backlog.

At around the same time, Christine received a letter of demand from the City, addressed to the Western Cape Department of Human Settlements, threatening water disconnection unless an arrears amount of R42 000 was settled within the month. Christine came back to the TSC for assistance.

The TSC contacted the newly assigned official at the HDA and forwarded a copy of the letter of demand to him, requesting an urgent follow up meeting. While he was vaguely aware of Christine’s case, he was not aware of the regularisation policy. The TSC therefore offered to arrange another meeting with responsible City and Provincial officials – which was accepted only after direct intervention by the acting CEO of the HDA.

During that meeting, the HDA official expressed concerns about the policy, highlighting his discomfort with the withdrawal of the subsidy from the seller and the lack of clarity with regard to dispute resolution processes.

He was unable to commit to a way forward at that meeting.

The HDA had no knowledge of the Provincial and City regularisation policy.

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He was unable to commit to a way forward at that meeting.

A way forward (so we thought)

In December, the HDA official confirmed that he had met with the Provincial Director: Project and Subsidy Administration who confirmed the approach. At the end of January 2020, after returning from leave, the HDA official offered to meet with Christine and the seller for an initial discussion. This meeting was scheduled to take place on 26 March 2020 but has had to be postponed indefinitely because of the Covid-19 lockdown.

The TSC also followed up with the Accounts Department at the City, but despite a number of emails including a request for a detailed breakdown of the amount owing and an offer to facilitate a negotiated settlement to pay off the arrears and to start paying for services, there was no response. The TSC escalated the matter within the Revenue Department but did not receive any response.

Case remains unresolved

Christine’s case study highlights a number of critical issues that require systemic intervention. Aside from the immediate and foundational problem relating to the title deed on the property, Christine owes the City a substantial sum for services that she has benefited from and has no building plans for her rental units.

There are several underlying (and inter-related) factors that create this sub-optimal outcome. In the first instance, process and technology weaknesses plague the subsidy administration system, contributing to delays in ownership regularisation and the handover of title deeds. Regularisation is further hampered by uncertainties regarding the adoption of a clear policy across all spheres of government as well as gaps in existing policies with regard to dispute resolution. As property prices rise, disputes are likely to become more common in areas where administration is weak. Disputes create enormous instability, not only for parties directly affected, but for entire communities and neighbourhoods; disputes that are not adjudicated in a transparent and administratively fair manner are often adjudicated through community-based mechanisms and enforced by violence.

Because Christine is not the registered owner of the property she is not billed for services, and there is no clarity on how she should engage with the City to negotiate an arrangement to pay off the large outstanding balance on the property’s account. She is likewise limited in engaging with the City with regard to planning approval for her rental units. At the same time, she could not be certain that the City would grant approval for these units as they are technically in violation of the single residential zoning scheme that applies in her area. She is therefore unlikely to proactively approach the City to regularise her property, and the City’s valuation and billing systems would not accurately reflect her investment in rental properties on her stand.
3.3.1 Title Deeds Restoration Programme

Government’s Title Deeds Restoration Programme seeks to address the title deed backlog for subsidised housing. However, the primary transfer of title deeds to beneficiaries is often complicated because current occupants are not the officially recognised, approved beneficiaries, and ownership may be contested due to informal sales or intestate issues. The legal and administrative complexities of these cases have meant that the Title Deeds Restoration Programme is falling far short of its targets.

In February 2019, the National Department of Human Settlements approved Guidelines for the Resolution of Disputes on the Rights to Ownership of Subsidy Financed Properties and the Administration of Cases where Duplicate Dependents are Detected. The policy sets out processes to regularise occupancy where applicable and to resolve disputes regarding the rightful occupancy and ownership claims via an adjudication panel. The first step in the process is an occupancy survey to determine who is currently living on the property and the circumstances under which they came to live there, if they are not approved beneficiaries.

As part of a pilot project exploring the application of blockchain technology, the TSC enumerated 930 households across four sites in Makhaza, Khayelitsha, where no primary transfer has taken place. This data is currently being used to assist the City in transferring properties to verified beneficiaries at the same time as creating an immutable record of ownership in the area. While the detailed experience of the TSC in working on these cases is described in a more comprehensive report on that project, three key data-related challenges that emerged during this project are outlined below, together with some commentary on policy related challenges.

3.3.1.1 Key challenge 1: Integrity of administrative data

There are two sources of information on housing subsidy beneficiaries and the properties allocated to them: the Housing Subsidy System (HSS) data and the project manager’s allocation lists (PM lists). The HSS is the national administrative system that contains data on all beneficiaries and allocated sites. Some of this data is generated prior to the initiation of a housing project. Beneficiaries may need to be substituted if they die or move away before the project is completed. In some cases, beneficiaries are approved for a subsidy in one area but in fact receive a property in a different area. In other cases, beneficiaries are erroneously recorded as having received a subsidy.

Aside from erroneous beneficiary data, property data is also compromised. Erf numbers may not be available at the time the beneficiary is identified and allocated to a specific site. Where this occurs, beneficiaries are allocated to properties using ‘dummy’ site numbers. These dummy site numbers should, in theory, be updated with the actual erf numbers beneficiaries receive once the project is complete. However, in practice, this does not always happen. As a result, the HSS data reflecting a subsidy beneficiary’s property may be incorrect, reflecting a temporary work around and not the actual details of the property.

The second source of information is the project manager’s allocation list. This is an Excel spreadsheet saved on an official’s laptop that contains data on actual individuals allocated to a site once the development is underway or completed.

Given the time elapsed between the identification of beneficiaries and construction of houses, data on actual households allocated to properties may not concur with data as per the HSS. In addition, actual erf numbers on the project manager’s list will not match dummy site numbers contained in the HSS. Furthermore, there is no standard process for project managers to formally record and update the status of beneficiaries on their own lists if it comes to their attention that a beneficiary has died or moved away. These updates are typically added as free-text notes in the Excel spreadsheet, and can be difficult for third parties to interpret.

Given these challenges, marrying the two sources of administrative data on beneficiaries and their allocated sites can be difficult and time-consuming.

3.3.1.2 Key challenge 2: Reconciling administrative data with data on actual occupants

A final data source used to validate ownership in the Title Deeds Restoration process is an occupancy survey that must be conducted prior to transfer. That survey gathers data on occupants and owners, as reported by survey respondents. Where reported owners match owners as per administrative data,
transfer can proceed. However, in some cases reported owners do not match administrative data; subsidy beneficiaries may have passed away or sold the property informally. Where this has occurred, further validation is required.

The City usually employs external service providers to conduct occupancy surveys. While there is a survey template, there is no standard process to gather the data, with some service providers using paper-based methods. In addition, there appears to be no external validation of the data. In one case, service providers were satisfied with affidavits from local councilors, despite their obviously detailed knowledge of who lives in what properties. Where occupancy surveys are undertaken, service providers pass data back to the City using a standard Excel spreadsheet in line with a template provided by the City. As with project managers’ allocation spreadsheets, there is no centralised system to store the data, nor are there any processes to maintain the data over time. The data can become stale if there are further delays between occupancy surveys and transfer, as those surveyed may pass away, get divorced, sell their homes informally, and so on.

3.3.1.3 Key challenge 3: Lack of integrated, centralised system to manage data through the transfer process

As noted, the current process to verify occupancy of beneficiaries and transfer ownership relies on multiple data sources typically contained in Excel spreadsheets. This data needs to be merged, shared and, in some instances, updated by several parties including occupancy survey service providers, the regularising entity (e.g. City of Cape Town), and the conveyancer. This creates challenges with version control and data integrity.

Figure 30: Data sources for the title deeds restoration process

- HSS data
- Project manager’s allocation lists
- Occupancy survey data
- Home Affairs data (verify deaths)
- Property data (street name, number, area, surveyor general code)
- Deeds Office data (verify if person is an existing home owner – subsidy eligibility criteria)
- Transfer lists for conveyancers (who can and can’t sign sale agreements)
- Records of signed and countersigned sale agreements

3.3.1.4 Key challenge 4: Policy on non-qualifying occupants in primary transfer cases

Where primary transfer takes place years after beneficiaries take occupation of a property, current occupants and reported owners may not match the beneficiary as per administrative systems. As noted, some beneficiaries might have sold their properties informally, got married or died. In order to regularise ownership of these properties, the policy of the Western Cape Department of Human Settlements provides for three scenarios as described below:

Table 5: Policy to regularise ownership where the current occupant is not the original beneficiary

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Current occupant meets subsidy eligibility criteria for developments approved between 1994 - 2014</td>
<td>Regular reallocation process: Original subsidy cancelled and current occupant substituted as beneficiary, property transferred to current occupant</td>
</tr>
<tr>
<td>2. Current occupant’s income exceeds subsidy eligibility criteria, but is below revised income threshold</td>
<td>Enhanced reallocation process: For developments approved between 1994 and 2010, household income threshold is lifted from R3 500 p/m to R15 000 p/m. If occupant(s) meet revised income criteria and can prove three years’ occupancy, original subsidy will be cancelled and reallocated to current occupant(s)</td>
</tr>
<tr>
<td>3. Current occupant does not meet the subsidy eligibility criteria</td>
<td>Ownership regularisation: If current occupant does not satisfy the qualification criteria for either the regular or enhanced reallocation process, the Housing Authority can offer to sell or lease the property to the occupant at a predetermined value (i.e. historic subsidy value). As in scenario two, the occupant must prove occupancy of at least three years. The Housing Authority may elect to offer rebates in special instances. If the offer to purchase (or lease) is not accepted, the Housing Authority will have no option but to evict the occupants, within 12 months.</td>
</tr>
</tbody>
</table>

38 Policy for the identification and confirmation of housing subsidy beneficiaries to enable transfer of ownership in subsidy-financed housing schemes: 1994 - 2014.
Scenario three described above has already been flagged as a potential challenge. Subsidy values in the area can be as high as R$120,000\textsuperscript{39}. In cases where occupants have purchased the house informally and paid the seller upwards of R$150,000 for the house, it is not viable to expect them to expend another large sum of money on the property. Nor is it viable to expect a non-qualifying heir or spouse of a deceased beneficiary to ‘buy’ a property that, in their minds, was given to the beneficiary years before. While officials only have a mandate to transfer properties only to qualifying beneficiaries, where the underlying cause of a problem is the state’s administrative failure, the costs of rectification cannot be shifted to households.

Interventions to regularise properties and formalise the City’s relationship with property owners in Christine’s situation (as described in Box 11) will require engagement with senior officials across levels of government and between ministries. Any substantial revisions to subsidy policy, the subsidy administration system and processes would lie within the mandate of the National Department of Human Settlements and would need to be implemented by provincial and municipal human settlements departments. Likewise dispute mediation and adjudication requires local implementation of national and provincial dispute resolution policies relating to properties that have not been transferred. They may also require the appointment of a commissioner under the Distribution and Transfer of Certain State Land Act of 1993. This act is similar to the Land Titles Adjustment Act, but applies to properties where no primary transfer has occurred.

In addition, integration of owners who do not yet have title deeds into municipal systems to enable administrative visibility and engagement would require a systems intervention across several functional areas within the City. This would also allow the City to bill property owners for services.

Many of these interventions will be time-consuming and politically complex to navigate. The TSC, sitting outside of government and embedded within a local community, is well-placed to pilot or test some of these solutions, providing the evidence to support wider implementation at scale. It is also well-placed to support property owners and encourage them to comply with administrative processes and pay for services.

### 3.3.2 Building-related issues

While the case load at the TSC is dominated by title deed-related problems, formalisation of property market in lower-income areas will also require significant intervention to regularise building activity and drive compliance with local bylaws and building regulations. To date, the TSC has not purposefully developed capabilities to assist clients with building-related queries although it has engaged with architects and the City’s planning department to assist a handful of clients with submitting plans for approval and regularising previous building activity that has not been approved.

As standard practice the TSC also conducts basic checks for encroachments on any properties it refers to potential buyers for purchase using the City’s online City Map Viewer. A case study of one property is provided in Box 12.

The TSC currently does not have the capabilities or capacity to engage with building-related issues at scale. Going forward, rather than develop these capabilities internally, the TSC will seek to identify and partner with other projects or organisations with existing capabilities in this regard.

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\textsuperscript{39} Subsidy values in the projects in Makhaza where sales agreements have been signed vary between R$74,965 and R$120,116, with one property at R$31,964.20. It is not clear on what basis these amounts are determined.
Box 12: Case study - building encroachments

In the process of searching online property listing websites for potential properties for a client to purchase, the TSC came across a property advertised for sale in Delft for R380 000. The property was in the price range for the client and initially looked like a good option for additional rental income, as the property came with three built flats in the yard.

As standard practice, the TSC spoke with the estate agent advertising the property and enquired if the seller had approved building plans for the backyard flats, to which the estate agent claimed that they did. This seemed unlikely as the TSC could see from the City Map Viewer that the structures appeared to be built over the property boundary, see image below – green line indicates property boundary.

To investigate further, the TSC contacted the relevant planning department for the area who confirmed that no building plans had been submitted for this property and that the rental units were in fact built onto the N2 road reserve. The TSC enquired whether it might be possible to purchase the land, but that would require all households in the street to do likewise in order to avoid an irregular property boundary (which officials do not like). In addition, the City does not own the land. Officials also noted that having four dwellings on the property was in violation of the zoning scheme and that the owner would have to request a departure. The official informed us that the City had issued a letter requesting the property owner to demolish the units. The official indicated that because the area was developed under the Less Formal Township Establishment Act of 1991, the area was exempt from the provisions of the National Building Regulations and Building Standards Act. Thus, the City could not institute legal proceedings against the owner should he not comply. In subsequent discussions with other officials this interpretation was disputed.

The TSC did not pursue the matter further but this case study demonstrates the knock-on effects of unregulated building work: although the title deed in this case was clear, a formal transaction was impossible. To comply with the City’s requirements, the owner would have to demolish the structures built on the road reserve. It is more likely that the seller would proceed with an informal, cash sale, creating a new title deed problem for the future buyer.
4. RECOMMENDATIONS

Drawing on the almost two years of experience at the TSC and numerous engagements with stakeholders in both the private and public sector, this report compiles several recommendations to support the development of a well-functioning low-value property market in South Africa, and identifies the entities responsible for the implementation of the interventions.

4.1 General recommendations

The first set of recommendations are not specific to any type of case category, instead they are general as their application would have far reaching benefits across the low-value property market.

4.1.1 Develop a more accessible and affordable formal property transfer system in South Africa

With regard to existing registered stock, at the heart of the low-income housing market problem is a formal system that relies on expensive legal professionals to vet identities and confirm ownership. The system most certainly protects property market participants who can afford it. But for those who can’t, it has the opposite effect, incentivising informal transactions or undocumented transfers to heirs, putting current ‘owners’ at risk of losing properties that aren’t formally registered as theirs. This is a system that is ripe for disruptive change leveraging new technologies.

The foundations that can enable this change are in place in South Africa. There is already a digital identity system in place, linked to biometrics. This means we do not need a conveyancer to verify identity when a fingerprint scanner will do. It should also be possible to request and submit official documents digitally, eliminating the need for clients to stand in line to obtain various documents and certificates from Home Affairs or the Department of Justice. While we might need to wait some years for legislation to allow property transfer documents to be signed digitally, the technology exists.
The TSC pilot is not the first or the only voice to call for reform. Other projects and interventions have actively motivated for change in this regard. Most notable of these is the Ilembe Property Registration Project in KwaZulu-Natal, a project run under the auspices of the International Finance Corporation. That project was launched in May 2019 in partnership with the KwaDukuza and Mandeni Municipalities and explores cheaper and more accessible models for primary and secondary property transactions.

The TSC can shed no new light on why little appears to have been done to date in this regard and why there appears to be little urgency with regard to reform. It is puzzling that policymakers and legislators appear to have been content to allow known problems with current systems and processes to persist in an area as critical as property transfer.

To the extent that this reflects a lack of evidence of the impact of these problems on the lives and economic prospects of the poorest households in South Africa, we hope the experiences documented in this report will add to the impetus for change.

Alternatively, or in addition, the apparent limited willingness to change may reflect justified concerns about the risk of change, amplified in light of the preponderance of destructive interventions in so many key state governed institutions in the recent past. Clearly, there is good justification for caution.

Beyond documenting case studies, the TSC is well positioned to create and pilot solutions with the TSC providing a contained environment in which to test proposed new processes and systems. The ability to test and refine solutions should reduce risk, and offer officials some degree of comfort as they proceed on their change journey. The blockchain project focusing on primary transfer offers a useful example in this regard.

Going forward the TSC will actively seek further opportunities to collaborate with both private sector providers including lenders and conveyancers, as well as state entities, including the Department of Justice, the Deeds Office and Home Affairs to identify and test innovative systems and processes that could streamline the property transfer process. The TSC would welcome the opportunity to share learnings from these pilots with officials, policymakers and project teams tasked with implementing the Electronic Deeds Registration Systems Act, and provide some feedback on the potential impact of proposed changes on lower-income property owners.

4.1.2 Revise or remove Section 10A and Section 10B of the Housing Act of 1997

In line with Section 10A and 10B of the Housing Act, beneficiaries of housing subsidies may not sell their houses for eight years after acquiring their properties. Section 10A envisages that beneficiaries who wish to vacate their properties must offer the dwelling to the provincial housing department. Once the beneficiary vacates the dwelling, the provincial housing department is deemed to be the owner of the property with the title deed for the property endorsed to reflect this change in ownership.

In practice, this transfer of properties back to provincial departments does not take place; it would be of interest to establish whether there has ever been a single case of a subsidy property reverting to the provincial department once it has been vacated by a beneficiary.

Rather than transferring properties back to the province, in the Western Cape there is an established process for beneficiaries to apply to the province for a waiver from the MEC. This waiver allows subsidy beneficiaries to sell their properties in line with a provincial policy that outlines acceptable reasons for doing so. Conveyancers who facilitate formal transfers of subsidy properties are well aware of the waiver requirement. They typically charge clients in the order of R1 000 to apply for a waiver, no doubt specifying reasons for the sale that align with the policy, irrespective of the actual reason for the sale.

The Electronic Deeds Registration Systems Act was signed into law in September 2019. The Act requires the Registrar of Deeds to develop and maintain an electronic deeds registration system. It allows the Registrar to specify functional and technical requirements for the system. The DARDLR awarded a 48-month contract to Deloitte Consulting for the provision of programme management services for the implementation of the electronic deeds registry system (e-DRS). However, no information is available in the public domain on implementation timelines. There is also no information on the potential impact of any proposed electronic system on processes, turnaround times and costs associated with property transfer. The TSC would welcome further opportunities to engage directly with the DARDLR as it designs and implements this new system.

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Of course, the waiver is not a requirement for an informal sale, and arguably only serves to strengthen the informal proposition.

Recent judgements that have applied Section 10A of the Act demonstrate just how wide-reaching the ramifications of these clauses could be. These judgments have nullified previous sales on the grounds that they were in contravention of the Act, in one case ordering that the ownership of the property revert to the Gauteng Provincial Department of Human Settlements and in the other upholding an eviction order against the current occupant. These rulings have been interpreted by some policymakers as having implications for those who rent out their properties too. In light of the very high number of informal sales that have occurred, many within the eight-year time period, and the very vibrant rental market in many lower-income areas, the risk faced by current owners – already vulnerable where properties are not formally registered in their names – is further amplified. This is not only tragic for those households who have invested in housing, but further exacerbates instability in lower-income neighbourhoods that arises from contested property ownership.

The insistence by policymakers that their command can in any way control what households do with their own properties in the face of a vibrant informal property market is curious. Beyond that, the narrative that a house is an asset that should never be sold particularly if it is owned by someone who is otherwise poor persists in some quarters, devoid of any reference to the actual circumstances and prospects of poor households. Surely, after so many years, and so much evidence that people sell their houses if not formally with the waiver, then informally without one, it is time to abandon the fiction that the restrictive clause is in any way helpful to the poor.

The recommendation of the TSC is to remove Sections 10A and 10B. Beyond removing Sections 10A and 10B to enable future sales, a mechanism is required for such changes to apply to any sale concluded while the law was in force. This would enable the formalisation of informal transactions that have taken place in the past in violation of the Act.

Despite our generally optimistic expectations of the likelihood of policy change, realistically, it is unlikely that required changes will take place in the near term. In the meantime, the TSC must continue in its efforts to shift the narrative about subsidy housing and housing beneficiaries, not only among policymakers and the officials who apply policy, but critically within the judiciary. To date, the TSC has not actively monitored case law or engaged with legal practitioners and judges. Going forward, we anticipate this area is going to require greater focus from the TSC. Included within this would be the development of capacity to bring cases to the courts and take them on appeal, particularly where judgements are poorly considered and have significant potential impact on market development.

### 4.1.3 Appoint a commissioner under the Land Titles Adjustment Act to resolve intractable cases

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<tr>
<th>Primary stakeholder:</th>
<th>Department of Agriculture, Rural Development and Land Reform</th>
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There are many cases that the TSC cannot resolve either because it is not possible to recreate an unbroken chain of transactions required for registration in the deeds registry, or because the facts of the matter are disputed. Properties in this category are ‘dead capital’ in the language of Peruvian economist, Hernando de Soto. Aside from limiting the ability of owners to leverage their properties or realise full value when they sell, they create instability in lower-income areas. Where there are no formal mechanisms to resolve conflict about property ownership, informal mechanisms, including those that rely on violence, will emerge.

There is no consensus on what mechanism might be used to bring these properties back into the formal system. For properties where transfer has already occurred, the Land Titles Adjustment Act (LTAA) seems to be the obvious choice. In line with this Act, the Minister of the Department of Agriculture, Rural Development and Land Reform could designate a specific area and appoint a commissioner who has wide-ranging powers to adjudicate on land ownership. The commissioner also has the power to redraw the General Plan in order to facilitate transfer and could rule on many outstanding cases.
Some dismiss the LTAA as inapplicable or unworkable, but no other solution exists or has been proposed. While we debate, the number of disputes grows and households continue to live with the threat of eviction from their own homes. We cannot hope to stabilise entry-level housing markets unless we find a way to resolve these unresolvable cases. Beyond this, without a procedurally fair mechanism to resolve these matters, any effort to stimulate demand for formalisation services may be completely counterproductive; while we may intend to stabilise the market by documenting occupation and claims of ownership, we may, in fact, aggravate the problem and cause more conflict.

Despite the very obvious need, and attempts by the TSC and other notable property experts to encourage the DARDLR to appoint a commissioner in line with the Act, to our knowledge, the LTAA has only ever been applied once in an urban setting – as part of the Greater Edendale land adjustment programme – but little has been published on the success of this programme to date.

As with other interventions that are obviously required but have never been implemented, we must ask ourselves why. One plausible reason for the reluctance on the part of the DARDLR is a fear that the Department will be overwhelmed by the demand for such services. This is a reasonable fear in light of the scale of the problem.

But we must not be afraid.

We believe we need to try implement the LTAA, generate test cases, document the process and determine whether, and how, it can be replicated. CAHF has already prepared a memo on the LTAA and intends to circulate it within the National Department of Human Settlements and the DARDLR.

At the same time, the TSC has initiated discussions with law firm Norton Rose Fulbright to assist the TSC in bringing an application to the Minister in the DARDLR on behalf of clients who live in the vicinity of the TSC’s office and whose cases require the intervention of a commissioner under the LTAA. The TSC intends to document the process so that learnings can be widely disseminated.

4.1.4 Review process to obtain a VA copy of a title deed

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<th>Primary stakeholder:</th>
<th>Department of Agriculture, Rural Development and Land Reform</th>
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In November 2019 a new process was implemented at the Deeds Office in Cape Town for any applications for verified copies of title deeds, known as VA copies, made after 1 January 2020[41]. The new process requires that the application be advertised in a newspaper that circulates in the area in which the property is located. This increases costs for the client (adverts cost between R1 200 and R1 500) and is arguably ineffective; newspapers may not be widely read and property owners are unlikely to scan the classifieds daily to reassure themselves that no-one has attempted to obtain a VA copy of their title deed fraudulently. We would suggest that the advertisement requirement be removed and other methods to counter fraud be identified.

4.1.5 Develop a set of clear service protocols to manage common barriers to transfer that arise at a municipal level

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<th>Primary stakeholder:</th>
<th>Municipalities – various departments</th>
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The TSC has operated in Cape Town without any formal operational Memoranda of Understanding with the Municipality. It has relied on existing relationships with key City officials to resolve problems that arise, and has invested a great deal of time in building relationship where none existed. This is clearly inefficient. It also creates material reputational risk for the TSC; there are some matters that simply cannot be resolved because the TSC is unable to reach the right official, or is unable to secure a response from the right official. It would be very useful for the City to outline clear processes and reasonable turnaround times to resolve common challenges. These include high arrears on rates accounts, irregular building activity, primary transfers and locating missing title deeds.

4.2 Recommendations relating to deceased estates

As mentioned earlier, one of the key drivers of title deed problems are deceased estates that are not wound up and formally transferred to heirs. The following recommendations seek to make the process of winding up deceased estates easier and more affordable for low-income households.

4.2.1 Adjust the small estates threshold to enable heirs to transfer properties out of deceased estates and at the same time, allow for integration between the Departments of Justice and Home Affairs to reduce the risk of fraud

The threshold for small estates is currently at R250 000 and was last adjusted in 2015. Estates that exceed this threshold are significantly more expensive and complex to wind up. Since 2015, property prices have increased noticeably in some lower-income areas, and it is not uncommon for subsidy properties to exceed this threshold. At the very least the threshold should be adjusted to align with property price inflation, with a mechanism established to review and adjust this threshold on an ongoing basis.

Given that processes are paper-based and rely principally on affidavits where there is no will in place, the risk of fraud is high. Thus, at the same time as adjusting this threshold, the Department of Justice should prioritise improved integration with the Department of Home Affairs so that data on next of kin can be verified against official records.

4.2.2 Assess processes and increase capacity at the Master’s Office

Primary stakeholder: Department of Justice, Master’s Office

The TSC experiences long delays at the Master’s Office (up to 70+ days) to receive critical documentation required to proceed with deceased estates.42

If the Covid-19 pandemic has a noticeable impact on mortality rates, which all current experience suggests it will, the Master’s Office will come under increased strain. There is a significant need for the Department of Justice to review the capacity of the Master’s Office and increase the staff complement where it is found to be lacking. There is also a need to improve current processes. A Paperless Estate Administration System (PEAS) has been in place since 2014. While this is a step in the right direction, its innovation was to enable paper documents to be scanned and stored digitally, rather than to eliminate paper documents. There is scope to enhance the functionality of the PEAS system further.

In addition, there may be an opportunity for the TSC to become an accredited partner of the Master’s Office so that documents can be digitally captured by the TSC, obviating the need for clients to go to the Master’s Office. In addition, beyond the current system, the TSC would be well placed to pilot and test further enhancements to the estates process, eventually leading to an entirely paperless and fully integrated e-government service launched by the Department of Justice together with the Department of Home Affairs.

The TSC will therefore initiate conversations with the Department of Justice and the Master’s Office in Cape Town to explore opportunities to collaborate.

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4.3 Recommendations relating to primary transfers

Another case category that requires significant attention relates to primary transfers. This category requires attention at three interconnected levels – policy, processes and systems.

4.3.1 Review policy on eligibility where ownership of the subsidy property has changed

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<th>Primary stakeholder:</th>
<th>City of Cape Town – Tenure Administration and Transfers</th>
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<td>Western Cape Department of Human Settlements</td>
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<td>National Department of Human Settlements</td>
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In line with current provincial policy, where subsidy properties are occupied by individuals who do not qualify for subsidies, these individuals are expected to purchase the property at the recorded subsidy value. Non-qualifiers include those who have already owned a registered property in the past, as well as those whose incomes exceed an adjusted threshold. Within the blockchain pilot conducted by the TSC on properties not yet transferred to beneficiary households, the recorded subsidy value of properties could be as high as R120,000. In the study area, there were a number of properties that were purchased informally by non-qualifiers, who had already paid beneficiaries in the order of R150,000 for the property. It would simply be infeasible to expect them to purchase the house again. Likewise, there are two cases where widows of subsidy beneficiaries have already received subsidy houses in the past. In line with the policy, they would have no claim on the properties they currently live in and regard as home.

The underlying principle of equity guides this policy – subsidy properties should only be allocated to qualifying beneficiaries. But this principle must be balanced by fairness – property owners should not bear the costs of administrative failure on the part of the state. We would also argue there is also insufficient emphasis within the policy on creating stable, vibrant neighborhoods where property rights are secured.

We would therefore suggest that the policy allow for adjudication of cases where the occupant is not a qualifying beneficiary but where their claim to a property is clear. In the case of disputes, it may be useful to appoint a commissioner in line with the Distribution and Transfer of Certain State Lands Act of 1993. This Act applies to properties that have never been transferred, and could be implemented together with the LTAA, with a single commissioner authorised to adjudicate properties that have never been transferred as well as those that have.

4.3.2 Develop a set of data protocols and systems to enable improved data management for primary transfers

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<th>Primary stakeholder:</th>
<th>City of Cape Town – Tenure Administration and Transfers</th>
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<td>National Department of Human Settlements</td>
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There are several disparate data sets that are used and created during the primary transfer process. This includes initial data on beneficiaries and sites captured on the national Housing Subsidy System on project inception. These can be updated throughout the course of the development process but only with provincial authorisation. In addition, spreadsheets generated by project managers within the City of Cape Town who record details of actual occupants who take possession of subsidy houses on completion. Additional spreadsheets generated by service providers who conduct occupancy surveys where there is a delay between occupation and transfer. More spreadsheets are generated as beneficiary households sign sale agreements and as cases are prepared for transfer. There is no centralised system to store these data sets and various versions of spreadsheets will be amended as necessary by the City and its partners as the process unfolds. There are also no clear processes for beneficiaries to inform the City of material changes in their household structure or location that will impact on the property transfer process. Thus, if beneficiaries die, get married, relocate or even sell their houses, there is no way to record these events and no process to facilitate signature of any additional documents required for transfer. Data gathered at significant expense during occupancy surveys therefore often becomes stale and transfer is delayed further.

43 This solution has been proposed by former World Bank consultant Gavin Adlington and member of the Ilembe Property Registration Project.
Ideally, one integrated data system should be developed to hold all relevant beneficiary data. In addition, clear processes are required to enable beneficiaries to keep their data up to date so that beneficiary whereabouts are known when transfer can take place. These systems and processes should not only be used to enhance efficiencies in the transfer of backlog cases but should be used to prevent future backlogs from arising.

4.3.3 Develop protocols to share data on ownership and occupancy to enable the City to recognise ‘business partners’ prior to transfer

Currently, the City only recognises owners of primary transfer properties when conveyancers submit rates clearance requests as part of the transfer process. Where transfer processes have stalled, the City has no data on owners and occupants even where this data has been gathered by occupancy surveys. Given the time it takes to formalise the transfer of ownership of affected properties, it is recommended that protocols be developed to share data on ownership and occupancy to enable the City to recognise ‘business partners’ prior to transfer, thereby allowing the City to start billing households for services as soon as possible. This will also allow the City to engage formally with property owners regarding building applications.

4.3.4 Develop a process to track the transfer process and the whereabouts of title deeds

As mentioned earlier, there is no centralised system within the City to monitor the progress of individual properties through the transfer process. While new processes require that all title deeds are disseminated by a specific division within Urban Management, officials in that division manually capture data on title deeds they have received onto spreadsheets. To our knowledge, there is no central database that tracks contracts for transfer awarded to conveyancers together with progress on the transfer of each property through the registration process, culminating in the physical handover of the title deed to a beneficiary. When the TSC has approached the City to obtain title deeds on behalf of clients who claim they have never received them, City officials insist the burden of proof lies with the client, a requirement that is patently absurd – how would a client prove they did not receive a title deed? Clearly, the burden of proof should lie with the City which should maintain evidence that the document was handed over. A barcode-based document tracking system would be very helpful in ensuring visibility on the whereabouts of all documents, keeping all parties accountable, and capturing evidence of client handover.

4.4 Recommendations relating to "X" properties

While the so-called "X" properties in Makhaza, Khayelitsha are a particularly challenging category of cases to deal with, there is an urgent need to find a way forward for these properties.

4.4.1 Drive consensus on a way forward on "X" properties

There are approximately 1 200 properties in the immediate vicinity of the TSC that were allocated and transferred to beneficiaries who never took physical possession of the properties. In many cases registered title holders are unaware that they own properties that have been occupied by other households for over 25 years. The City has obtained several legal opinions as to the best way forward, but has to date been unable to resolve the status of these properties. There appear to be two possible solutions. The first solution would include these properties in the mandate of a commissioner appointed under the LTAA, as described above. This would require the commissioner to adjudicate
each matter on a case-by-case basis. The second option would be for the Housing Act to be amended, with a requirement that beneficiaries take physical possession of their properties. Where this does not occur, the Province would be entitled to unwind the transfer. The advantage of this approach is that it effectively deals with similar cases around the country (no data is available on how many such cases there are). We would suggest that this be considered together with a review of Section 10A and 10B of the Housing Act.

4.5 Recommendations relating to property purchases

Access to finance is an important component of the property purchase process, and many households struggle to access mortgage finance which they might afford if they had support. The TSC is currently unable to assist clients in financial distress and has no partner who can offer such advice. This is a material gap we would like to close going forward. Access to the government’s Finance Linked Individual Subsidy Programme is also limited and could be improved.

4.5.1 Develop accessible debt rehabilitation pathways for credit-compromised clients

The TSC has been approached by 68 clients for assistance in purchasing properties, accessing subsidies, and applying for mortgage finance. Of those, 21 clients have not met the pre-qualification criteria to access a FLISP subsidy to help finance their purchase due to poor credit histories or over-indebtedness. At this stage, the TSC has no referral point for these clients. Existing debt counselling services are costly and will result in a very long, and often unsuccessful journey to financial health. It also automatically makes them ineligible for additional credit, including mortgage finance. Ideally, the TSC would like to refer clients to a free money advice centre, that can build the capacity of clients to manage their finances and negotiate settlements on existing credit obligations directly with credit providers. This could be funded with existing allocations for financial education that are required in line with the Financial Sector Charter. The TSC would be willing to facilitate a pilot project to test the concept and assess whether it could be scaled and replicated.

4.5.2 Review and improve current processes for FLISP administration

While the TSC has only been involved with a small number of FLISP transactions, those that have taken place have taken several months. In addition, the timing of the subsidy payout to sellers has created frustration and tension for the parties involved. In order to encourage uptake of the FLISP instrument, it is critical that the Western Cape Department of Human Settlements review the current processes to remove any bottlenecks that create delays. In addition, it is critical that the Department communicate greater clarity of expected timelines for the FLISP administration to manage the expectations of all stakeholders, including estate agents, buyers, sellers and mortgage providers.
### 4.6 Summary of recommendations

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<th>CATEGORY</th>
<th>PRIMARY RECOMMENDATION</th>
<th>STAKEHOLDER</th>
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| General             | • Develop an accessible, affordable property registration system  
• Identify and test innovative systems to streamline the property transfer process  
• Expedite the implementation of the electronic deeds registration system  
• Explicitly incorporate specific needs and circumstances of lower-income property owners in the design of new systems  
• Revise or remove Sections 10A and 10B of the Housing Act, retrospectively so that past sales are not illegal  
• Appoint a Commission under the Land Titles Adjustment Act (LTAA) & Distribution and Transfer of Certain State Lands Act (D&TCSLA) in one pilot area, to test the application of these acts for regularising informal transactions, unlocking properties in deceased estates and adjudicating disputes  
• Develop a set of clear service protocols to manage common barriers to transfer that arise at a municipal level (rates arrears management, regularising building activity, locating title deeds that have not been handed over, primary transfer)  
• Review process to obtain VA copy of title deed  
| Deceased estates    | • Adjust the small estates threshold beyond current R250 000 limit  
• Assess processes and increase capacity at the Master’s Office  
• Enhance functionality of Paperless Estate Administration System (PEAS) and integrate directly with Home Affairs to limit risk of fraud  
| Primary transfers   | • Develop a set of data protocols and systems to enable improved beneficiary data management for primary transfer  
• Develop protocols to share data on ownership and occupancy to enable municipalities to recognise ‘business partners’ prior to transfer  
• Review policy on eligibility where ownership of the property has changed  
• Develop a process to track the full transfer process, the whereabouts of title deeds and evidence of final handover to clients  
| “X”-Properties      | • Drive consensus on a way forward on X-properties – additional Section 10c of Housing Act or LTAA commissioner  
| Property purchases  | • Develop accessible debt rehabilitation pathways for credit-compromised clients  
• Review current processes for FLISP subsidy administration and address specific challenges (i.e. reduce turnaround time of administration process, reduce delay in payment of subsidy to sellers)  
• Create and communicate clear timelines for FLISP subsidy administration  
|                     |                                                                                                                                    | National Department of Human Settlements  
|                     |                                                                                                                                    | City of Cape Town: Tenure Admin & Transfers  
|                     |                                                                                                                                    | National Department of Human Settlements  
|                     |                                                                                                                                    | Western Cape Department of Human Settlements  
|                     |                                                                                                                                    | City of Cape Town: Tenure Admin & Transfers  
|                     |                                                                                                                                    | National Credit Regulator and formal lenders  
|                     |                                                                                                                                    | Western Cape Department of Human Settlements  

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5. A WAY FORWARD FOR THE TSC

The TSC’s growth strategy is framed around a number of workstreams. The first workstream seeks to drive systemic change required to create an efficient, accessible property transfer system in South Africa. Shifting the fundamentals of the property transfer process to create an affordable, accessible and safe system will require intervention at a policy and legislative level. The first workstream will also focus on property law, with a panel established to monitor case law, propose and draft changes to legislation and regulation and to represent clients on key test cases. It will also motivate to establish a property and technology panel to monitor key trends and developments in e-government in South Africa, with a focus on its application to property markets (e.g. digitised title deeds, electronic land registration).

While the TSC and other projects will continue to motivate for this, it is unlikely that these changes will happen within the short to medium term. In light of this, the TSC must optimise its operations within the confines of existing policy and legislation, while still motivating for change.

The continued operation of the TSC will allow for the ongoing creation of evidence to support this process. Beyond documenting the very real ramifications of current processes and systems for clients, the TSC offers a very useful testing environment for the implementation of alternative solutions. To the extent that policymakers and officials are immobilised by an aversion to change and the risks that come with it, the TSC offers a safe ‘sandbox’ to pilot new approaches. Critically, it will allow households to get on with their lives and commence the process of securing trusted records of transactions, preventing further deterioration of ownership records going forward.

The growth strategy seeks to optimise the current operations of the TSC (workstream 2), laying the groundwork for initiatives to drive local scale (workstream 3), and national replication (workstream 4).
Each of these components is discussed below.

5.1 Workstream 1: Driving systemic change: a longer-term programme

Ultimately, the objective of the TSC is to shift the fundamentals to create accessible systems and processes that create bankable, administratively visible and uncontested property ownership records.

As the TSC continues to operate, the cases that are dealt with and documented by various TSC offices around the country will provide evidence to support this process. The TSC will continue to engage with policymakers in the National Department of Human Settlements with regards to key policy issues that require attention. This includes the pre-emptive clause restricting the sale of state-subsidised properties for a period of eight years (Section 10A and 10B of the Housing Act), the subsidy administration process and the national and provincial dispute resolution policies.

Core to this engagement would be the continued collection and dissemination of evidence gathered from the TSC’s on-the-ground efforts and its experience in piloting new approaches and technologies.

But beyond this, we believe there is a need for a more active approach that extends beyond the provision of evidence to policymakers and officials in the hope that it is sufficiently compelling to drive action. After all, it is not for lack of evidence of the problem that no solution exists; the problems documented by the TSC are not new, nor are they a surprise to policymakers and legislators, many of whom have had direct personal experience of the challenges of regularising ownership in lower-income areas in South Africa. A more active approach would see a formally constituted property law advisory panel established to support the work of the TSC. The panel would closely monitor case law emerging on property disputes, actively promote changes within the legal system, and draft new policy, legislation and regulations for consideration. It would also assist clients to bring test cases before the courts to create precedent where none exists. Importantly, the panel would help drive the TSC’s market-driven agenda of supporting the growth and development of low-income property markets.

In addition, we believe it would be useful for the TSC to establish a property and technology panel to monitor key trends and developments in e-government, in South Africa and globally, with a focus on its application to property markets (e.g. digitised title deeds, electronic land registration). Ultimately, the move to more efficient and streamlined digital processes backed by sound policy and regulation is how the TSC will achieve its vision of making property market transactions cheaper and easier and thereby more accessible to low-income households without compromising security.

5.2 Workstream 2: Optimising operations within the confines of existing policy and legislation

An optimised solution for the TSC in Makhaza, Khayelitsha, requires three core components: a case management system, Memoranda of Understanding (MOUs) with the City of Cape Town and the Western Cape Department of Human Settlements, and a procedurally fair process to adjudicate disputes and formalise neutralised properties.

5.2.1 Case management

Clients typically sign up at the TSC office. Frontline staff assess the client’s situation, explore available evidence and documents and determine a way forward in consultation with the TSC’s case manager. Frontline staff give the client a checklist outlining all documents that are required to proceed and explain to clients how to obtain any missing documents. Clients collect those documents and bring them back to the TSC, where they are checked and scanned. If everything is in order, the case manager will draft the necessary legal documents which are signed by the client at the TSC. The case manager will then prepare an instruction for the conveyancer so that the matter can be lodged at the deeds registry. Once the transfer has been registered, the TSC will hand over the title deed and encourage clients to sign a will.
The underlying components of the process require different capabilities. The front office client support function is simple. It is not difficult to recruit and train frontline staff to on-board customers and follow up with clients as they gather required documents.

More complex tasks that require trained paralegals or conveyancers include diagnosis and case planning, validation and drafting legal documents. A well-designed case management system would allow these more complex tasks to be centralised and performed by skilled resources working remotely.

The case management system could also allow for some tasks to be automated. At the most basic level this includes client notifications and reminders, prompting clients to collect and submit required documents or visit the TSC office to sign documents. More advanced functionality could automate workflow between the various service providers who interact on a property transaction. Critically, the case management system would maintain a secure record of all documents and interactions on a particular matter. For those cases that cannot easily be resolved currently, it provides a sound basis for resolution in the future when obstacles to formalisation are removed. The case management system would also facilitate easy extraction of information required for performance monitoring.

The TSC has submitted a funding proposal to develop this case management system. This system would leverage the solution developed by Seso Global as part of the blockchain pilot together with the TSC’s understanding of common problems, underlying processes and documents required to resolve them.

5.2.2 Service level agreements with key departments in the City and the Province

The TSC currently has no operational MOUs with the City of Cape Town or the Province. It relies instead on existing processes, and where these fail, on direct relationships with key officials who support the TSC.45 Over time, the TSC has built more and stronger relationships with officials across several functional areas, improving its effectiveness.

While this works well in many cases, there are still limitations; not all officials are responsive and the TSC has to follow up repeatedly with some. TSC team members have on occasion arrived unannounced at officials’ offices because emails and phone calls are not answered. At the same time, officials who are supportive are themselves at risk, operating outside of a sanctioned framework, and sometimes without capacity to engage with the cases that the TSC brings forward. This is clearly sub-optimal; aside from increasing costs, it creates reputational risk for the TSC if matters remain unresolved for months. It is also demoralising for the team. Ultimately it compromises the scalability and viability of the TSC.

The work of the TSC could be streamlined by formal agreements with various municipal departments and directorates including Development Management, Human Settlements, Valuations, Revenue and Information and Knowledge Management. These agreements would outline clear processes for dealing with client requests across the City and, where possible, would allow for integration with City systems so that common problems, including high arrears on municipal accounts, can be identified and flagged for resolution within a reasonable timeframe. It would also allow for the TSC to share data with the City, enabling it to update its own records on property ownership and to engage formally with property owners, even if ownership is not yet registered.

While the TSC has very productive interactions with the Province and has access to its online FLISP application system and the HSS, these too, rely on personal relationships with specific individuals. As with the City, it would be very useful to formalise this relationship.

5.2.3 Mechanism to deal with disputed and neutralised properties

There are very many property disputes as well as many properties where there is no possibility of recreating the back-to-back transactions required for registration in the deeds registry. The properties

45 The active support of three key officials has been critical in enabling the TSC to do its work. Paul Whelan at the Provincial Department of Human Settlements has supported the TSC from inception providing information and assistance as well as invaluable guidance to the TSC on navigating Provincial processes and identifying key colleagues in the Province and the City who may be able to assist on specific issues. Stefan Grobler, Programme Manager: Tenure Administration and Transfers in the City of Cape Town's Human Settlements Directorate has worked closely with the TSC on the blockchain project in Makhaza focused on primary transfers. Without his assistance, the project would have been impossible. Floris Theart who heads up Revenue Customer Interaction Centre Management has helped the TSC move forward on a number of cases where arrears were high.
are ‘dead capital’ to borrow de Soto’s terminology, and the TSC is currently unable to revive them.

There is no consensus on what mechanism might be used to bring these properties back into the formal system. For properties where no transfer has taken place, the Distribution and Transfer of Certain State Lands Act offers a potential solution. Where transfer has already occurred, the Land Titles Adjustment Act (LTAA) seems to be the obvious choice. In line with this Act, the Minister of the Department of Agriculture, Rural Development and Land Reform could designate a specific area and appoint a commissioner who has wide-ranging powers to adjudicate on land ownership. The commissioner also has the power to redraw the General Plan in order to facilitate transfer and could rule on many outstanding cases.

Some dismiss the LTAA as inapplicable or unworkable, but no other solution exists or has been proposed. While we debate, the number of disputes grows and households continue to live with the threat of eviction from their own homes. We cannot hope to stabilise entry-level housing markets unless we find a way to resolve these unresolvable cases. Beyond this, without a procedurally fair mechanism to resolve these matters, any effort to stimulate demand for formalisation services may be completely counterproductive; while we may intend to stabilise the market by documenting occupation and claims of ownership, we may, in fact, aggravate the problem and cause more conflict.

To our knowledge, there is only one case where the LTAA has been applied in an urban setting. This was in Edendale in the Msunduzi Municipality in KwaZulu-Natal. We believe there is a need to implement the LTAA in other urban settings, generate more test cases, document the process and determine whether, and how, it can be replicated.

5.3 Workstream 3: Scaling up operations

To date the TSC has relied on very little marketing to acquire new clients. Undoubtedly there are many more clients with similar problems that require assistance. The TSC can grow its reach with a more focused and proactive approach to identifying properties in need of regularisation. As a first step the TSC would scale up its local operations in Makhaza, Khayelitsha.

5.3.1 Leveraging the foundations of a small start in Makhaza to build scale in Makhaza

While the TSC’s caseload can continue to grow organically, in all likelihood, we will see only a fraction of the cases that exist in the area. More clients will come to the TSC over time if the TSC advertises its services more visibly. But beyond the TSC’s current responsive model, a more efficient approach to drive local scale would be to proactively identify and resolve specific problems at an area level. This would require door-to-door enumeration of the area, gathering data on ownership claims, and comparing this against official records.

Optimised processes and technology are necessary to facilitate this. But they are not sufficient. A further critical, and not as easily replicable, requirement for scale is trust. Housing ownership is often contested, and proactive door-to-door interaction with households about ownership is not always welcome. In addition, local area leadership may derive some of their legitimacy from their ability to interact with City officials on behalf of property owners who have no administrative visibility. Local leaders also often act as endorsing entities on property transactions and administer alternative or informal governance systems in lower-income areas given the effective absence of the state. It would therefore be unsurprising if some leaders were to regard the work of the TSC as threatening.

The TSC has been able to manage these political challenges in Makhaza to date because of the capabilities of the community liaison officer and his ability to build relationships with elected leaders and street committees, currently the TSC’s most significant referral source. In addition, the TSC started small, helping individuals in need of assistance on a case-by-case basis in order to demonstrate some successes. This has allowed the TSC to build a trusted reputation with households in the area and with local leadership.

We believe this trust can now be leveraged more broadly to implement wider-scale projects in the local area that proactively seek to address known problems at scale. The TSC in Makhaza has already piloted an approach to deal with the primary transfer backlog in the area. Beyond this, the TSC would like to enumerate the approximately 4,500 properties in the immediate vicinity of the TSC, and to resolve the cases that emerge through this process. Further projects in the area could focus on regularising informal building activity to ensure that household investment that has taken place in the past is officially recognised and sanctioned, creating bankability.

5.3.2 Extending the reach of the TSC within Cape Town

A case management system together with formalised agreements with the City of Cape Town and the Western Cape Department of Human Settlements will provide the critical infrastructure that can be leveraged to build scale across the City. This ‘TSC in a box’ back-end infrastructure comprising the systems, processes and skilled case managers can potentially support a range of front-end formats, operated by accredited partners and located in existing infrastructure including bank branches, other advice offices and even retailers. Ideally, we would like to see a functional, accessible service point across all lower-income neighbourhoods of Cape Town.

5.4 Workstream 4: Replicating the work of the TSC in other areas

For the solution to be replicable across the country the TSC would need to negotiate MOUs with other municipalities and provinces. The TSC’s experiences in Cape Town can be leveraged, showcasing the importance of the work itself to other municipalities in order to encourage them to facilitate the creation of local centres. Should the TSC succeed in creating MOUs with Cape Town and the Western Cape, these could provide a template for other municipalities and provinces.

Aside from these agreements, replicating the work of the TSC in other provinces will require the TSC to engage directly with the National Housing Finance Corporation (NHFC) who administers the FLISP subsidy in other provinces.

Beyond this, the scale and scope of a larger TSC organisation will enable it to engage with various other government departments who are central in driving change – including the Department of Justice, the Department of Home Affairs, the Department of Agriculture, Rural Development and Land Reform and possibly the Department of Science and Technology.

Given the scale and widespread nature of the problems the TSC aims to address, it is unlikely that the TSC will have sufficient capacity to provide complete coverage across all areas nationally. However, it aims to develop the ability to identify areas where there is already market activity and where the incentives of municipalities, households and other private sector participants to formalise property ownership can be leveraged. No doubt these areas exist across all eight metropolitan municipalities and can be identified through an analysis of data on formal property market activity as well as through engagement with municipalities.

5.5 Funding the TSC’s growth strategy

For the time being, the work of the TSC will be donor funded. The TSC has prepared funding proposals focusing on optimising the current operations of the TSC and building local scale. At the time this report was prepared, this proposal was under consideration. The TSC will approach other donors to support more active legal engagement to ensure that property rights are protected and that households can participate in housing markets. This agenda is aligned with the interests of mortgage lenders who will be approached to support these efforts. Other potential donors include global entities that support land and property market development as well as financial inclusion.

There may be some scope for the work of the TSC to be funded by the national, provincial or local government. However, in light of the very pressing fiscal constraints that are likely to exist in South Africa over the medium term, as well as the strings that are often attached to state funded projects, this source of funding has not been explicitly explored.
To date the TSC has relied extensively on assistance of conveyancers who provide their services on a pro bono basis. They have provided this assistance willingly and with enormous generosity. This assistance will be required going forward. Given that the TSC provides extensive support to prepare cases - collecting and verifying documents, drafting contracts and liaising between the various parties to a transaction - costs to conveyancing partners are kept to a minimum. At the same time, the TSC would like to assess the ability of households to pay for the services of the TSC. Already the TSC requires non-indigent clients to pay conveyancers R1 000 to cover disbursements associated with transactions. There may be scope to increase fees in a measured way, particularly where there is some degree of affordability. This will require the TSC to develop new capabilities to assess ability to pay, to bill clients and to manage collection of fees.

5.6 Closing remarks

The project team is deeply grateful for the opportunity it has had to work on this project. It has enriched us, and given us real hope. Too often, townships are written off as dormitory towns, badly located and forever condemned to perpetuate the exclusionary economic legacy of apartheid, locking inhabitants in an intractable cycle of poverty. No doubt there are places in South Africa where this is true. But there are very many places where this is not true. The extent of market activity, the vibrancy of rental markets and the very observable evidence of household investment in housing in areas like Khayelitsha is witness to that.

That said, the legacy of the past does limit market development. As illustrated by the experience of the TSC documented in this report, barriers arise from administrative failure on the part of the State, poor policy and inappropriate regulations that inhibit the development of an accessible, affordable property transfer system. It is simply too difficult for households to undertake formal property market transactions, and where the formal system does not work, households will create their own solutions.

While sceptics might have lost hope, we must remind ourselves that it is possible to create sensible policy that embraces technology, and develop legislation and regulation to support lower cost property transfer in South Africa. This is the work of the TSC; to tell the story of opportunity and to create the foundations for inclusive growth. In the words of Nelson Mandela – “It always seems impossible, until it is done”.

THE TRANSACTION SUPPORT CENTRE
The Transaction Support Centre (TSC) is an action-research pilot project established by consulting company 71point4 in partnership with the Centre for Affordable Housing Finance in Africa (CAHF). The TSC is a walk-in advice office located in Makhaza, Khayelitsha, a lower-income neighbourhood of Cape Town. The TSC team assists clients to formalise tenure and/or resolve other property-related issues. Beyond assisting clients, the TSC’s partners, 71point4 and CAHF, document client case studies, explore mechanisms to optimise existing processes and identify systemic constraints that impede formalisation. These are shared with various public and private sector partners in an effort to improve client experiences and outcomes, and to drive systemic change.

The TSC has been operating for almost two years. Over that time, we have onboarded 392 cases from walk-in clients who face a range of property-related challenges. In addition, the TSC has piloted a blockchain-based solution to resolve almost 1,000 backlogged primary transfers. Overwhelmingly, clients come to the TSC because they have problems with their title deeds.

The Centre for Affordable Housing Finance in Africa (CAHF) is a not-for-profit company with a vision for an enabled affordable housing finance system in countries throughout Africa, where governments, business, and advocates work together to provide a wide range of housing options accessible to all. CAHF’s mission is to make Africa’s housing finance markets work, with special attention on access to housing finance for the poor. We pursue this mission through the dissemination of research and market intelligence, supporting cross-sector collaborations and a market-based approach. The overall goal of our work is to see an increase of investment in affordable housing and housing finance throughout Africa: more players and better products, with a specific focus on the poor.

71point4 is a Cape Town-based strategic research consultancy specialising in consumer-focused, data-driven research. We help clients drive change in transformational sectors that contribute to economic development in South Africa and the continent as a whole, and improve the well-being of consumers. Our team of data scientists, economists and marketers work across a wide array of data types and sources from ‘big data’ including administrative and transactional data sets to small, thick data from in-depth interviews and focus groups.

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