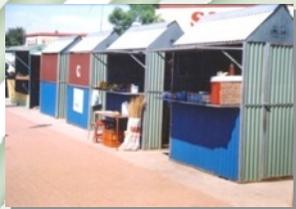




Urban LandMark



INVESTIGATION INTO DELAYS IN ISSUING TITLE DEEDS TO BENEFICIARIES OF HOUSING PROJECTS FUNDED BY THE CAPITAL SUBSIDY

1 December 2011

MAKING URBAN LAND MARKETS WORK FOR THE POOR

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- **Introduction**
- Process of registering land in South Africa
- Factors causing blockages to registration
- Consequences of low levels of registration
- Findings and recommendations



Purpose of the research

- The Subsidy Housing Assets study found that **well over a million subsidy beneficiaries** have received a subsidy house **without the registration of formal title.**
- The purpose of the research was to:
 - Investigate the reasons why title has not been transferred to subsidy beneficiaries; and
 - Identify the key opportunities to address the issue.
- The research comprised a desktop review and interviews with 32 stakeholders



Definition of title to a property

- A title deed is the legal document that reflects the ownership of a property.
- When a property is bought and/or sold and transfer takes place, the existing title deed is superseded by a new title deed which is executed in the Deeds Office through a signature by the conveyancer and the Registrar of Deeds.
- The Registrar of Deeds is an independent unit within the National Department of Rural Development and Land Reform - its function is to keep a public register of land, preserve the records and provide information to the public. The Deeds Registrar Act, 47 of 1937 is the law which gives rise to the deed's office's mandate.
- Owners of property should either personally have a copy of their title deed, or if a financial institution holds a mortgage over the property, the title deed should rest with the financial institution.



Value of title to a property

- The title deed is the owner's proof of ownership and facilitates market and financial transactions. Its key functions are that it:
 - Protects rights
 - Records changes
 - Facilitates property transactions
 - Facilitates financial transactions
- Title deeds are also important as they:
 - Provide individuals with an address
 - Recognise the owner and their family as being part of the municipality
 - Enable ownership of the property to pass onto heirs in the event of death
 - Obliges the owner to pay property rates and service charges for services received thereby contributing to municipal sustainability.



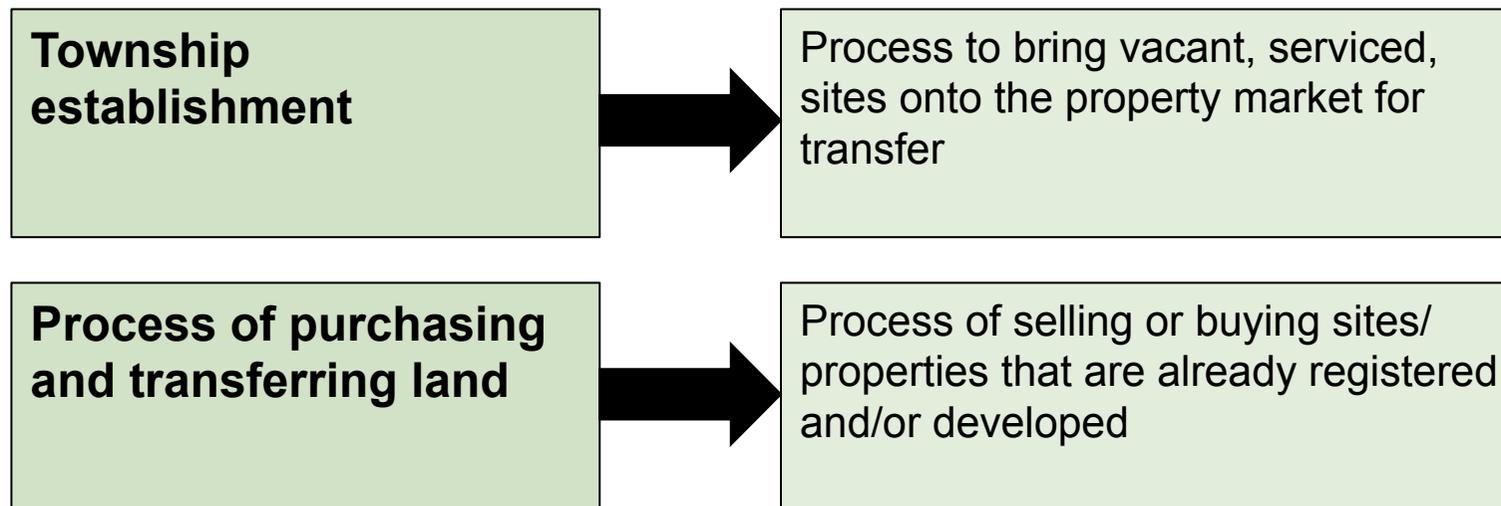
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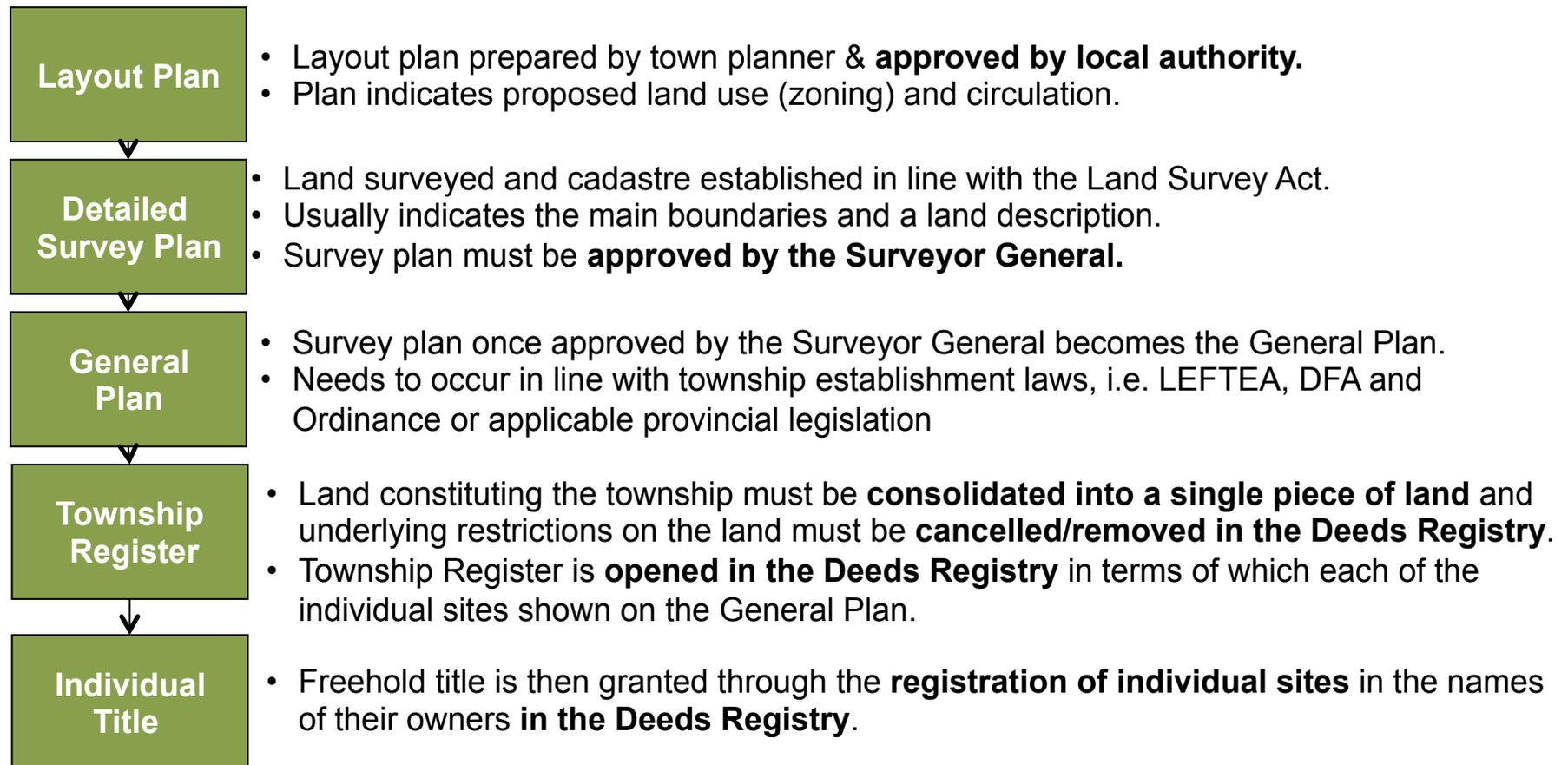


Components

The process of registering urban land in South Africa can be divided into two components:

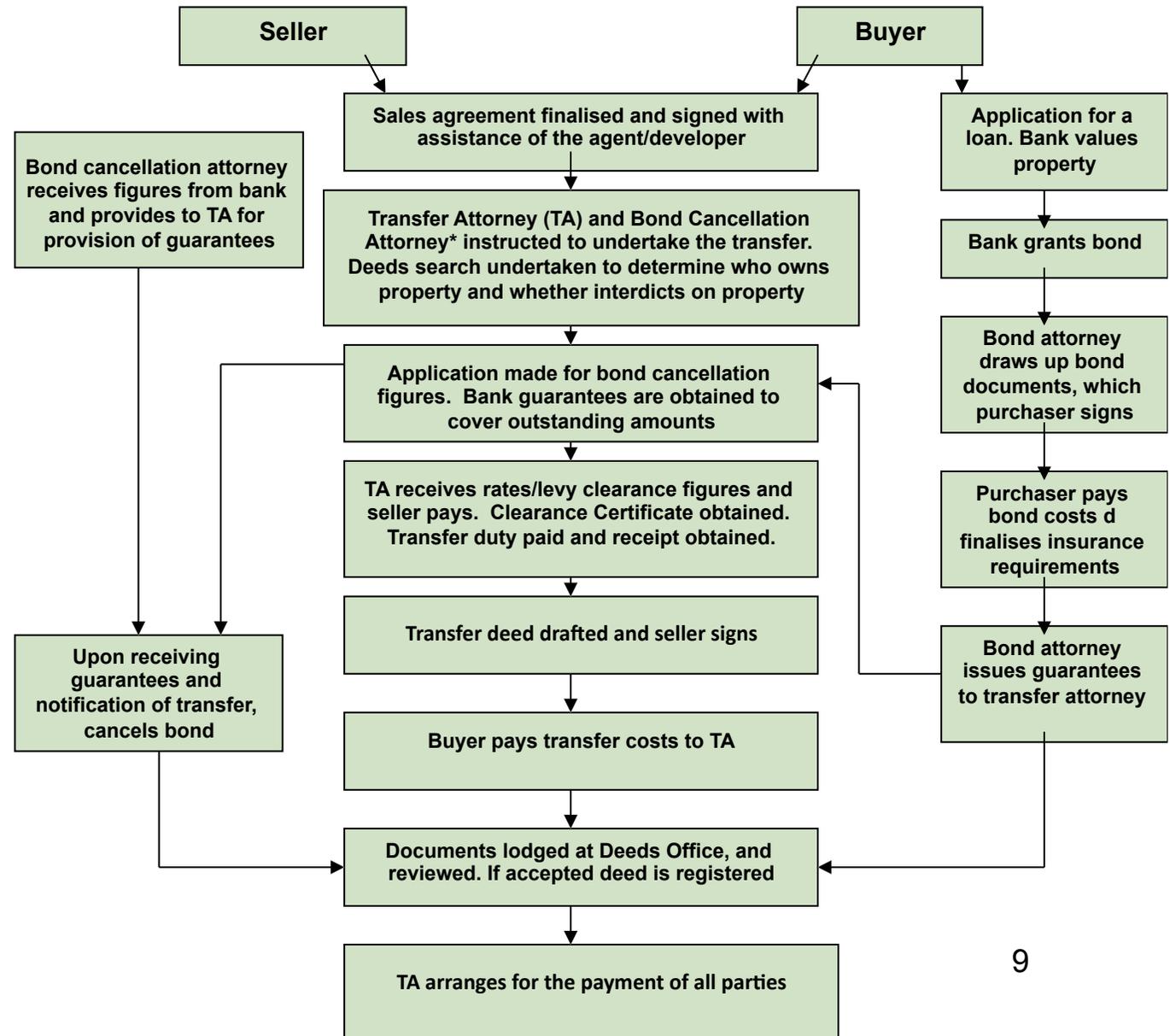


Township Establishment



Purchasing/Selling and transferring land

- The process of transferring registered land is complex
- Undertaken by a seller and buyer with the assistance of a Transferring Attorney (Conveyancer).
- The process can take six weeks to six months.



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Delays in the township establishment and proclamation processes

- This is the major root cause of not issuing title deeds, arising from:
 - Delays in proclamation where the various requirements to get an approval of a general plan are not met
 - Delays in opening a township register usually due to difficulties in resolving underlying land rights
- Reasons for delays in township establishment include :
 - Municipal and provincial difficulties due to:
 - Lack of capacity, officials not understanding the process, misalignment between departments and difficulties in rectifying mis-allocations of subsidy houses
 - Disproportionate focus on delivery at the expense of ensuring title registration
 - Problems in the physical implementation due to sites being occupied informally
 - Problems with the legislation – there are three different legislative options i.e. the Provincial Ordinances, the Less Formal Township Establishment Act and the Development Facilitation Act (DFA). The Constitutional Court ruling that invalidates sections of the DFA is a further problem, with implications for the other two routes.
 - Problems within the Deeds Registry offices including repeated returns on applications
 - Land held in trust by traditional leaders and legal uncertainty around tribal land



Revisions to the project payment process 1995 - present

Date	Characteristic	Milestones
1995 – 2001 Private sector driven delivery	<ul style="list-style-type: none"> • Process strictly controlled • Developers required to meet specific milestones to draw down the subsidy amount • Last milestone was the registration of the title deed in the name of the beneficiary 	<ul style="list-style-type: none"> • Draw 1: Approved engineering designs (about 5%) • Draw 2: Approved General Plan (about 5% of total subsidy) • Draw 3: Completed/installed services with services handover certificate by local authority (about 40%) • Draw 4: End-user transfer with title deeds (about 10%) • Draw 4: Completed top-structure with a letter from the beneficiary indicating that they are satisfied with the house that they have received called the 'happy letter' (about 40%)
2002 -2009 Public sector driven delivery	<ul style="list-style-type: none"> • Process less controlled • Number of milestones reduced • Payment of the completed top structure allowed to occur before registration of transfer 	<ul style="list-style-type: none"> • Draw 1 : Land acquisition, opening of the township register, 50% of project management, land surveying and pegging, social facilitation and legal fees (up to R1100 per site) • Draw 2: 50% of project management and services (up to R8300 per site) • Draw 3: Construction of the house, overheads profit (remainder of the subsidy amount)
2009+ Integrated Residential Development Programme	<ul style="list-style-type: none"> • Municipality driven delivery using private sector service providers • Registration of title is not included as part of the payment process 	<ul style="list-style-type: none"> • Phase 1 entails planning, land acquisition, township establishment and the provision of serviced residential and other land use stands to ensure a sustainable integrated community. • Phase 2 comprises the house construction phase for qualifying housing subsidy beneficiaries and the sale of stands to non-qualifying beneficiaries and to commercial interests.

Failure to hand over title deeds

- Title deeds are registered but not handed over to owners
- Reasons include:
 - Owners of subsidy houses do not collect the title deeds as they do not understand their importance
 - Conveyancers hold back the title deed due to non-payment by the municipality
 - The municipality holds back the title deeds due to the sales restriction on subsidy houses



Appropriateness of the deeds registration system

- Some of the stakeholders interviewed questioned the suitability of the current Deed Registration system :
 - The system is too complex for small transactions
 - Processes are not appropriate for low income people who occupy subsidy housing
 - It is expensive, requiring the services of a conveyancer

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Consequences

- **Informal sales and discrepancy between current occupants and owners**
 - Property owners have to sell their properties informally – both due to not having a title deed and the complexity and cost of the transfer process
 - The current occupant is often not the original beneficiary, resulting in a major disconnect between deeds records and reality
 - An informal sale results in on-going complexity and is high risk for all parties
- **Difficulties in rectification**
 - Given the high level of divergence between occupants and allocated beneficiaries rectification of title deeds records is important
 - This is difficult and expensive, and currently there are very limited legal processes to do it



Consequences cont.

- **Difficulties in accessing title deeds**
 - Processes to access title deeds where they have not been issued are extremely difficult
 - Two legal options: the one is a High Court Action and the other is the Land Titles Adjustment Act
- **Unresolved estates**
 - Unresolved estates are a key issue in that in the event of the death of a beneficiary of an unregistered property, deed issuance is not possible until such time that the legal heirs have been identified and the estate wound up.
 - The fee for this is R5,000 to R6,000 which is unaffordable for many



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Findings

- The profile of subsidy houses without registered title is:
 - Mainly located in unproclaimed and/or unestablished townships
 - Where townships are established there has been no transfer of title to individual beneficiaries
 - It is not certain if the original beneficiary is still in the property as they may have “*absconded*” or sold the property informally
- There are also a large number of title deeds that have been registered in the name of beneficiaries but not physically handed over to these individuals by a Municipality or Conveyancer
- Even in properties where registered title was provided the owner is in a high proportion of cases unlikely to be the current occupant
- The high levels of discrepancy and informality in subsidised housing is undermining the property title deeds registration in South Africa and undermining the rights of individuals who have been allocated a subsidy house



Recommendations

Improving the extent to which registration occurs in respect of new subsidy housing

- Financial and administrative disciplines should be re-introduced into the housing subsidy development process – even if it slows down development initially.
- Metropolitan and large municipalities should establish dedicated teams that focus on the township proclamation and establishment process
- Training and promotion of the importance of title deeds should be undertaken for relevant Officials in Provinces and Officials and Councillors in Municipalities
- The capacity and levels of skills within the Deeds Registry Offices should be improved.
- Consideration should be given to establishing a more immediate, more affordable administrative system to record land rights, to supplement and make accessible the existing Deeds Registry system. This system must retain administrative clarity on who owns a property, but allow ownership to be registered at accredited provincial or municipal administered property registers, that are more localised and accessible.

Recommendations cont.

Resolving the issue of properties where registration has not occurred

- **A registration backlog eradication plan should be introduced.** The focus of this plan should be to enable beneficiaries who occupy a property, but do not have the title deeds, to initiate a process to access such title. This will need to incorporate a dispute resolution process to address contesting claims.
- **There needs to be further investigation into a series of options to de-professionalize and make it more cost effective to transfer individual title for lower value properties**