DRAFT
TRANSFER POLICY FOR HUMAN SETTLEMENT PROJECTS

JULY 2014
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Bookmark not defined.
## 1. DEFINITION OF TERMS

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<th>Definition</th>
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</thead>
<tbody>
<tr>
<td><strong>Allotment area:</strong></td>
<td>An area of administration designated by the Surveyor General’s Office for the purpose of approving General Plans and assigning erf numbers.</td>
</tr>
<tr>
<td><strong>Business plan:</strong></td>
<td>A five-year schedule of subsidy housing projects funded by the Municipality organised by a housing programme indicating expenditure targets for each year.</td>
</tr>
<tr>
<td><strong>Cadastral survey:</strong></td>
<td>An attorney who has additional qualifications and has been admitted by the High Court as a conveyancer thereby authorised to carry out particular aspects of the conveyancing process.</td>
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<tr>
<td><strong>Conveyancing:</strong></td>
<td>Amongst other things, the process of transferring the ownership of a plot created in a General Plan to a new owner and causing the new ownership of the plot to be registered in the Deeds Registry.</td>
</tr>
<tr>
<td><strong>Deed of sale:</strong></td>
<td>The written contract between the seller and the buyer recording the plot that has been sold, its purchase price and any restrictions in the use of the plot being sold and conditions of the sale. The deed of sale gives the buyer, amongst other things, the right to take transfer of the piece of land.</td>
</tr>
<tr>
<td><strong>Deed of transfer:</strong></td>
<td>The Title Deed.</td>
</tr>
<tr>
<td><strong>Deeds Office:</strong></td>
<td>The government agency in which the registrar’s functions include maintaining records for all land registered in his/her area of jurisdiction, registering grants or leases of land issued by government or other authority, executing and registering deeds of transfer of land and certificates of title to land. The registrar also attests and registers mortgage bonds, cancels mortgage bonds; registers notarial deeds whether notarial bonds, praedial or personal servitudes, leases or ante nuptial contracts; registers General Plans of erven or subdivisions of land, opens registers of the erven or subdivisions of land shown on such General Plans and records the conditions upon which the erven or subdivisions have been laid out or established, and in terms of Section 3(1)(y) of the Deed Registries Act, the registry “keeps, whether by means of computer …or other means, … such registers containing such particulars as are necessary for the purposes of carrying out the provisions of the Act and of maintaining an efficient system of registration calculated to afford security of title and ready reference to any registered deed”.</td>
</tr>
<tr>
<td><strong>Deeds Registry:</strong></td>
<td>A Deed’s Office.</td>
</tr>
</tbody>
</table>
Province: The Western Cape Provincial Municipality of Human Settlements.

Developer: A private firm or the Municipality financially responsible for the implementation of a subsidy housing project financed through, amongst other things, the Human Settlement Development Grant.

Diagram: A document which must be signed by a land surveyor and approved by the Surveyor General containing geometric, numerical and verbal representations of an erf, including the geographic position of the erf, and its extent and erf number, for the purpose of registering a land use right, including ownership.

Enhanced serviced site: A plot within a subsidy housing project containing an enclosed toilet, tap and wash basin and electricity connection.

Erf: Every piece of land registered as an erf, plot or stand in a Deeds Registry.

Erf number: A unique number given to an erf in the Deeds Registry within an allotment area, usually assigned to erven in ascending numerical order according to the chronology of subdivision.

Erven: The plural of erf.

Expropriation order: Notice issued by the government or the Municipality, noted in the Deeds Office records that the authority intends to expropriate the plot or a portion of the plot.

General Plan: A document that must be used in place of a diagram for a development consisting of 10 erven or more which must be signed by a land surveyor and approved by the Surveyor General containing geometric, numerical and verbal representations of the erven, including the geographic position of the erf, and its extent and erf number, for the purpose of registering a land use right, including ownership.

Grant Allocations Advisory Committee: A committee consisting of officials of the Province who, amongst other things, recommends Funding Approval for subsidy project applications to the Municipality. A project granted Funding Approval is placed on the Business Plan of the Municipality.

Greenfields Project: A project developed on open, unoccupied site.

Handover Certificate: Document signed by the Developer and the beneficiary and sometimes other parties before occupation, usually immediately before occupation. Sometimes the document includes a snag list. The document is also referred to as a “Happy Letter”. Preceding the Handover Certificate, the developer issues a “Practically Complete
Certificate” indicating the unit is sufficiently complete for occupation. A practically complete certificate can also be called an “Occupation Certificate”. However, some municipalities refer to the Handover Certificate as an Occupation Certificate. The document is not to be confused with “100%/Full Completion Certificate” or “Retention Certificate”. A “Retention Certificate” is signed by the beneficiary three months after occupation, when the building payment retention period is over.

**Land Availability Agreement:** An agreement or contract between the land owner and developer in which the developer of the land parcel is granted a range of authorities required to develop the land by the owner while he/she retains ownership.

**Land Surveyor:** A professional registered in terms of the Professional and Technical Surveyors’ Act, 1984 and thereby authorised to determine the geographic position of the points of plot boundaries in a subdivision.

**Plot:** Equivalent to an erf, in this Policy.

**Power of Attorney:** A written document in which one person (the principal) appoints another person to act as an agent on his or her behalf, thus conferring authority on the agent to perform certain acts or functions on behalf of the principal.

**Personal servitude:** Personal servitudes can be positive or negative. If positive, the owner of the land burdened must allow the beneficiary to exercise some right on the property e.g. usufruct. If negative, it restricts the owner from exercising one or more of his normal rights of ownership. Such negative servitude is a restraint e.g. prohibiting the owner from subdividing.

**Praedial servitude:** A servitude which one property (dominant property) has over another (the servient property).

**Project Assessment Committee:** A committee consisting of officials of the Municipality which recommends the approval or rejection of subsidy project application from Planning and Conditional Approval to the Head of Municipality, having received technical input on the application from the directorates in the Municipality.

**Registration of Title:** The process whereby the Deeds Office recognises a transfer of ownership associated with a plot as valid, and adds the record of the change of ownership to the Deeds Registry.

**Sales Agreement:** A Deed of Sale.
**Servitude:** A right belonging to one person in the property of another entitling the holder to exercise some right or benefit in the property, or to prohibit the owner from exercising one or more of his normal rights of ownership.

**Subdivision:** The division of a piece of land (an erf or plot) into two or more portions.

**Surveyor General’s Office:** The government agency responsible for the supervision of cadastral surveys by land surveyors, the maintenance of cadastral records and the preparation of cadastral maps.

**Title Deed:** A deed of transfer conferring ownership of an erf on the buyer which deed records all registered title deed conditions affecting that particular property.

**Top structure:** A house meeting the minimal specifications laid out in the Housing Code.

**Transfer documents:** Documents drawn and submitted to the Deeds Office by a conveyancer for the purpose of registering a transfer in land ownership which include a deed of transfer and a number of other supporting documents as specified in the legislation under which the development has been established [e.g. a rates clearance certificate].
2. ABBREVIATIONS

GAAC: Grant Allocations Advisory Committee
PAC: Project Assessment Committee
GP: General Plan
SARS: South African Revenue Services
SGO: Surveyor General's Office
SOP: Standard Operating Procedures
LUPA: Land Use Planning Act
LEFTEA: Less Formal Township Establishment Act
PMO: Portfolio Management Office
POA: Power of Attorney
LAA: Land Availability Agreement
HOD: Head of Municipality
3. Executive Summary

3.1 Central Goal of the Policy

The goal of this Policy is to achieve timeous transfer of title to housing beneficiaries in new greenfields and/or upgrading projects. The Policy defines timeous property transfer as transfer that occurs within 30 days of the beneficiary occupying the housing unit or granted occupation for a serviced stand. A longer delay in transfer will lead to problems. In particular, occupants may die, change their marital status or transfer their properties informally in the interim. The legal processes to sort out these changes are costly and time-consuming. A failure to transfer adds to the ever growing backlog in transfers. The period of 30 days is thus a benchmark to gauge the efficacy of this Policy.

3.2 Scope of the Policy

The Policy responds to the key reasons why transfers have tended not be timeous in the past as shown in Table 1 below.

Table 1: Policy actions to address reasons preventing timeous transfer

<table>
<thead>
<tr>
<th>Reason for lack of timeous transfer</th>
<th>Policy action taken by the Municipality</th>
</tr>
</thead>
</table>
| Breakdown in the flow of legal steps required for transfer/Omission of legal steps | • Legal steps required for transfer defined and monitored as project milestones which developers need to adhere to  
• The completion of legal steps in the required sequence for transfer monitored through the Municipality for all project approval processes |
| Insufficient time and/or effort dedicated to the legal process | • Certain preliminary legal steps made to achieve conditions for project approval  
• Achievement of benchmark for timeous transfer by developers not monitored and enforced  
• Project payment system changed so as to incentivize developers to carry out title transfers timeously |
The Policy thus makes changes, in a targeted manner, to the way in which the Municipality:

a) Motivates subsidy projects;
b) Monitors the planning and implementation of subsidy projects;
c) Receives payments for projects;
d) Measures the performance of subsidy projects;
e) Acts as a developer.

These criteria place the Municipality in a better position to manage the transfer process successfully which is only effective if the Municipality responds in a positive manner to the Policy.

This Policy covers new greenfield and upgrading projects established under the Land Use Planning Act (LUPA) or the Less Formal Township Establishment Act (LEFTEA).

### 3.3 Legal process

The Policy outlines the legal steps that must be followed, in a particular sequence, for plots created in subsidy projects to be transferred to their beneficiaries. The key steps include:

a) The acquisition of land for the project by the Municipality;
b) The approval of the development by the planning department of the Municipality;
c) The approval and registration of the General Plan of the development by the Surveyor General and the Deeds Office;
d) The signing of Sales Agreements by the land owner (Municipality) and beneficiary;
e) The lodging of transfer documents through a conveyancer at the Deeds Office.

There is an array of legislation that governs the legal process, and the sets of authorities and professionals involved in each step of the process.

To achieve successful transfers, the Municipality needs to carefully co-ordinate the steps above with the processes of planning, beneficiary administration, service installation and construction.

### 3.4 Policy Provisions

The Municipality needs to follow a set of general rules to culminate in transfers. Only enhanced serviced sites and sites with completed top structures (or sites where the completion of top structures is imminent) can be transferred. Furthermore, the Sales
Agreement must be signed by both seller and buyer before occupation of the unit or serviced plot by the approved beneficiary can occur. However exceptions to this policy will apply in the following cases:

a) If a serviced plot is allocated to a FLISP beneficiary earning between R 3 501 and R 7 000 per month the beneficiary must provide, in addition, an approved loan from a financial institution for the construction of the top structure. If the development caters for top structures no informal structures will be permitted. All proposed top structures must conform to the building regulations of the Municipality;

b) If a serviced plot has been allocated to a FLISP beneficiary who earns between R 7 001 and R 15 000 per month then the beneficiary must in addition pay for the serviced plot and provide a loan for the top structure from a financial institution before occupation will be granted or transfer of the plot approved. The beneficiary must provide such documentation and pay the monies required before a thirty (30) day period after notification that transfer can proceed. Failure to comply in the stipulated time will mean that the plot will be transferred to the next approved beneficiary on the Waiting List.

One of the key overarching principles of the policy provisions is that Municipality must meet as many of the legal requirements for transfer as possible before service installation and top structure construction commences. Once a project commences, it is financially impractical to stop the project so that all legal processes can catch up with installation and construction processes.

The table below summarises the provisions of the Policy, as well as the role players responsible for changing the Municipality’s systems, procedures, and operational responsibilities.
<table>
<thead>
<tr>
<th>Provision</th>
<th>Purpose of provision</th>
<th>Roles and responsibilities of main role players</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Designation of HOD Human Settlements for Implementation as champion of Policy</td>
<td>HOD oversees the necessary changes to the Municipality’s systems, procedures and supporting documents, and reports on implementation progress to the EM Community Services and Province</td>
<td>HOD Human Settlements to report on progress to EM Community Services and Province</td>
</tr>
<tr>
<td>2. Measurement of the monitoring indicator</td>
<td>Municipality checks efficacy of Policy via indicators which gauges the extent to which the benchmarks of 30 days for transfer is being met in new greenfields and upgrading projects</td>
<td>Municipality or Consultants to design indicators in detail and to provide the required information management systems</td>
</tr>
<tr>
<td>3. Changes to project approval conditions and reorganisation of tranche payment schedule</td>
<td>The Municipality is required to complete three legal steps specified by Province before the Province will provide funding to servicing or construction of top structures: i) approval of development by planning authority; ii) approval of the General Plan by Surveyor General; iii) registration of the General Plan by the Deeds Office</td>
<td>Province may revise the approval processes and tranche payment system dependent on the individual projects</td>
</tr>
</tbody>
</table>
4. Changes to information requirements regarding existing land rights for land acquisition funding applications

| Application for funding to acquire land for project site includes evidence that any land legal issues related to the project site, such as servitudes or restrictions, have been identified and the extent to which they conflict with the development determined | Human Settlements to access funding from Province and Corporate Services to effect the land purchases. Planning Department to investigate all restrictions and planning issues | Project Approval Committee recommends funding to HOD taking account of servitudes, restrictions etc. |

5. Introduction of project management milestones within the legal process

| Municipality to report to Province that specific steps in the legal process (as milestones) has been completed and to submit documentary evidence in support of progress reporting | HOD Human Settlements to update SOP Registering and Projects at the on a quarterly basis | Regional planners, project managers, works inspectors to report on milestones set |

6. Increase in transfer retention amount

| Provincial incentivises the Municipality to carry out transfer timeously by withholding double the value of the subsidy amount for transfer until the property is registered in the name of the beneficiary is to be considered as a penalty | The HOD, through his Project Managers must closely monitor the transfers and ensure compliance with the time limit | The HOD Human Settlements, through his Project Team, must ensure compliance. The role of Corporate Management is essential to compliance |

7. Changes to the role of the Municipality appoints a contractor as the project developer

| Municipality amends the contract template so that the developer supports the provisions of this Policy including the increase in the transfer retention amount | The HOD Human Settlements amends the contract specifications to meet all the requirements | The Developer through the HOD Human Settlements |
3.5 Policy implementation timeframe

Within three (3) months of approval of the Policy, all adjustments to the systems and procedures of the Municipality required by this Policy must take place.

In the first 12 months following the approval by Council of this Policy, the Municipality shall apply to Province to grant project approval even if the approval conditions for the approval stage under consideration have not been met. The decision to waive an approval condition should take account of whether the project being approved is a servicing project or top structure project. Greater strictness should be applied to top structure projects compared to servicing projects that are to be followed imminently by a top structure project on the same land parcel. The rationale is that during the servicing part of such a project, the developer would be given time to meet outstanding approval conditions, although this is not an ideal scenario. When only a serviced plot is to be given to a beneficiary the process of transfers is vitally important as the transfer must occur before occupation of a plot is granted. In this case occupation may be based on an incomplete data process and the proposed beneficiary may be rejected during the transfer process and then a formal eviction process through the courts may result in fruitless expenditure.

3.6 Roles of developers

The Municipality may appoint a developer for a project. The developer’s primary responsibility is to manage the completion of legal process approval conditions and milestones so that the benchmark of timeous transfer is met. In carrying out this responsibility, the developer should proactively raise legal process issues with the Municipality in the planning and project preparation stage and implementation stage, and help design remedies. Developers also have a key responsibility of supplying documentary evidence verifying the monthly progress reports of the legal process milestones to be submitted to the Municipality which in turn forwards the same to Province.
4 Introduction

4.1 Background

4.1.1 Problem Statement

The transfer of title to end-user beneficiaries of newly built government subsidised housing units is not occurring when the units are occupied. Often transfers occur sometime after occupation occurs, and the transfer process can drag on for years after occupation.

This situation is problematic for the following reasons:

a) Transferring title after occupation can give rise to a number of problems, and the greater the time gap between occupation and transfer, the more problems arise. Occupants may change their marital status, die or transfer their properties informally in the intervening period. The legal tools for sorting out these changes are costly for individuals to deploy, and have had limited success in subsidy housing situations.

b) Beneficiaries occupying property for which they do not have title lack security of tenure and thus may not maintain or improve their property.

c) The lack of title deprives beneficiaries of a financial asset.

d) Local governance is compromised as the municipality will find it difficult to make the occupants responsible for paying municipal utility bills.

The transfer of property produced in subsidy projects to beneficiaries entails a process in which a number of legislative obligations have to be met. In essence, a succession of legal processes has to occur, in which the completion of one step is dependent on the completion of another. In this Policy, the full process of creating the subsidy erf in a legal sense and transferring this erf to a subsidy beneficiary is termed the "legal process". The legal process starts with the acquisition of land, goes to the approval of the subdivision of the land on which the project is sited and ends with the legal transfer of the subsidy unit to the beneficiary. Furthermore, certain legal processes are dependent on key beneficiary administration processes occurring. Although certain steps have to occur in sequence to be legally valid, there is some flexibility in the precise timing and ordering of other steps.

The Municipality is generally the developer of subsidised housing projects, and as such are responsible for managing the transfer of title in these projects. In the case of People Housing Projects (PHP) the Municipality is deemed to be the authority responsible for the transferring process. This is a result of the utilisation of the Waiting List or upgrading projects where the proposed beneficiaries are all residents in the Drakenstein Municipality. The Municipality would therefore resume all the responsibilities of a developer with respect to the transferring processes.
Transfers do not occur at the time of occupation for two main reasons:

a) There may be a break down in the flow of legal steps required for transfer in that certain essential steps may have been omitted;
b) Insufficient time and/or effort may be dedicated to the legal process by the Municipality, developers or designated conveyancers.

The Policy is aimed at addressing these problems in greenfields and upgrading projects by making targeted shifts to the way it monitors the planning and implementation of subsidy projects, approves payments to conveyancers and measures the performance of subsidy projects.

4.1.2 Scope of the Policy

As mentioned above, the Policy aims at achieving the timeous transfer of subsidy properties to beneficiaries by reforming in a selected manner, the way in which the Municipality approves, monitors, pays for and measures the performance of greenfields subsidy projects.

Table 3 shows the changes or policy actions that this Policy envisages.

Table 3: Policy actions to address reasons for lack of timeous transfer

<table>
<thead>
<tr>
<th>Reason for lack of timeous transfer</th>
<th>Policy action to be taken by Municipality of Human Settlements</th>
</tr>
</thead>
</table>
| Breakdown in the flow of legal steps/omission of critical legal steps | • Set certain key steps in the legal process as milestones  
• Identify gaps in the preparatory activities necessary to complete legal steps and monitor whether preparatory activities are undertaken through the project approval process |
| Insufficient time and/or effort dedicated to the legal process | • Set an overall minimum performance standard for title transfer in subsidy projects and monitor the extent to which the standard is attained by measuring performance  
• Make the completion of preliminary legal steps conditional for project approval where feasible  
• Change project payment system to incentivise the transfer of property to beneficiaries |

Many of the policy provisions are consistent with Municipality’s Standard Operating Procedures (SOPs) for the management of subsidy projects and this Policy will require that only certain aspects of the SOPs be augmented or emphasised.
4.2 Municipality SOPs with direct relevance to the legal process:

a) Application of Land Acquisition: This SOP covers the process through which the Municipality applies for funding to purchase land for subsidy housing development.

b) Project Approval Process: This SOP outlines the process through which the Municipality applies for the funding of subsidies for housing and upgrading projects. Each project must pass through three (3) stages of approval, namely Planning, Conditional and Funding before funding is made available for service installation and top structure building by Province.

c) Project application templates: This SOP covers the information that Municipality requires in order to submit at each of the above approval stages. Application templates are provided by Province for the Planning and Conditional approvals. The Municipality is required to forward all relevant information to allow Funding approval by Province to occur.

d) Registering and updating project at the Portfolio Management Office: The SOP covers, amongst other things, the project milestones that the project managers track together with evidence that they collect and to enable that tracking.

This Policy will prompt changes to:

a) Management arrangements and the performance measures used to assess project performance.

b) The standard project tranche payment schedule, which forms part of the terms under which projects are approved.

c) The project funding contract entered into between the Municipality and the Province following the second stage of approval (Conditional Approval).

4.3 Key Project stages covered

The Policy covers two broad project stages: project preparation and project implementation.

a) Project preparation is related to planning and obtaining a range of development approvals.

b) Project implementation mainly involves the installation of services which may be inclusive of the construction of top structures.

The legal process occurs across these two broad stages. The SOPs currently divide the task of monitoring the legal process between the Municipality HOD of Human Settlements and project managers, with the former being responsible for the legal process during preparation and the latter for implementation.

Because the legal process consists of some steps which have to occur in a fixed sequence and others where some flexibility in sequencing is possible, as shown in section 3, this Policy is also aimed at supporting the HOD Human Settlements, project managers and
conveyancers to achieve arrangements within projects such that the sequencing is legally correct, transfers are registered timeously and resources are used efficiently.

The Policy covers greenfields and upgrading projects i.e. projects which give rise to the transformation of unoccupied, unserviced land into formal human settlements, containing plots with enhanced services with or without top structures. Where an upgrading project occurs the beneficiaries are already placed on the designated plots. This would mean that transfers would be required within thirty (30) days of the completion of such development.

The Policy covers projects in which township establishment occurs under the Land Use Planning Act [LUPA] or the Less Formal Township Establishment Act (Act 113 of 1991) (LEFTEA). These are the main pieces of legislation under which townships are currently established.

4.3 General rules set by this Policy for the transfer of property

a) Only an approved beneficiary should be given occupation of a unit intended for ownership.

b) Only enhanced serviced sites and sites with completed top structures, or where the completion of top structure is imminent, should be transferred.

c) Before occupation, the developer must have entered into a written Sales Agreement with the beneficiary specifying the precise property (by reference to the erf number) which the beneficiary is purchasing and which he/she has the right to occupy. The erf number given in the “Handover Certificate” should be the same as given in the Sales Agreement.

The transfer of the property to the beneficiary should take no longer than thirty (30) days unless approval has been obtained for an extension of this time due to unforeseen circumstances.

5 Legal Processes Required

5.1 Legal process

The transfer of the property produced in subsidy projects to beneficiaries of the project entails a process with a number of legal steps governed by an array of legislation. The Policy refers to this process as the “legal process”, as opposed to the “physical process” which concerns the installation of services and construction of houses on the project site.

The legal process consists of seven steps each with a desired end result and the Municipality is required to initiate the process at each step. Each step must be checked to ascertain whether the processes are being followed correctly before completing the step in an approval or registration action. Furthermore, at each step there is a set of professionals involved in running many of the processes entailed.
The steps are as follows:

a) The Municipality acquires ownership of the land or obtains permission from the owner of the land in the form of Power of Attorney (POA) to develop the land.

b) The Municipality establishes the legal right to use the land on which the project is to be sited for the creation of a human settlement (i.e. area with residential and other land use components) and to subdivide the project site into a number of properties or plots. The process that has to be followed will depend on the legislation being used to establish the township and the land use rights. The legislation is either through LUPA or LEAFTA.

c) The Municipality, in conjunction with a professional land surveyor and the Surveyor General’s Office (SGO), creates properties or plots in the human settlement which will be transferred to the beneficiaries. In this process the land surveyor employed by the Municipality determines the exact dimensions and geographic position of the plots and the information is checked and then recorded by SGO through the approval of a General Plan for subdivision.

d) At the request of a conveyancer employed by the developer, the Deeds Office sets up a record of all plots created in the subdivision in its records.

e) The Municipality then undertakes a transaction in which a plot created in the subdivision is sold by the owner (the seller) to the beneficiary (the buyer). The transaction entails the signing of a Sales Agreement by the seller and buyer.

f) The conveyancer prepares the documents prescribed in legislation detailing the nature of the sale (i.e. transfer documents) and lodges them at the Deeds Office so that the transfer of ownership of the property can be registered in the deeds registry.

g) The Deeds Office records the transfer of ownership of the property. The record includes details of the buyer and seller and details of the property. The Title Deed to the property will reflect all title deed conditions that affect the property.

Each of these steps needs to be completed in a fixed sequence in relation to the others as the logic above implies, although the preparation for the completion of some steps can sometimes occur in parallel. For instance, the signing of Sales Agreements can occur simultaneous to many of the steps leading up to the conveyancer being instructed to transfer a particular property to a particular beneficiary in terms of the Deed of Sale. Each step has a set of processes and documentation required in law that the Municipality has to initiate to successfully achieve the result. The legislation under which the township is established (and the use rights required for the development to be established) determines some of the processes within each of the other steps. These aspects of the legal process are further described in Table 4 below.
### Table 4: Key aspects of the legal process

<table>
<thead>
<tr>
<th>Legal step/result</th>
<th>Authorities</th>
<th>Professionals involved</th>
<th>Key processes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquire land or suitable POA</td>
<td>Municipality</td>
<td>Conveyancer/Attorney</td>
<td>• Municipality purchases land, or if public land receives the land through an endorsement of the Title Deed or obtain suitable POA</td>
</tr>
<tr>
<td>Approve subdivision or layout plan</td>
<td>Municipality</td>
<td>Planners</td>
<td><strong>LUPA:</strong>&lt;br&gt;• Municipal Planning Department obtains consent for the development and conditions for the consent from a range of authorities, including environmental authorities&lt;br&gt;• Municipal Planning Department approves the development by council resolution subject to the consent conditions of other authorities (LUPA)&lt;br&gt;<strong>LEFTEA:</strong>&lt;br&gt;• Municipal Planning Department obtains approval to submit an application for township establishment to the Province. This occurs after the EA (ROD) has been received from DEADP&lt;br&gt;• Planning Department submits the application for approval and receives notification of the result</td>
</tr>
<tr>
<td>Approve a General Plan (GP)</td>
<td>Surveyor General’s Office (SGO)</td>
<td>Land surveyors</td>
<td>• Land surveyor places at least the survey pegs of the outer figure of the subdivision on the land parcel so that the precise co-ordinates can be determined, and submits survey records along with the draft diagram of the subdivision to the SGO&lt;br&gt;• SGO checks survey records before approval&lt;br&gt;• Land surveyor can place the pegs for internal subdivisions after GP approval, but pegs for each need to be placed and surveyed before the sales transaction can be recorded in the deeds registry</td>
</tr>
<tr>
<td>Legal step/result</td>
<td>Authorities</td>
<td>Professionals involved</td>
<td>Key processes</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------</td>
<td>------------------------</td>
<td>---------------</td>
</tr>
</tbody>
</table>
| Register the GP (open the township register) | Deeds Office | Conveyancer | • Municipality undertakes various land transfers and/or obtains POA as may be necessary to meet preconditions to register the GP  
• Municipality addresses any conflicting servitudes, title restrictions etc.  
• Conveyancer obtains certificates of title for the project site as required  
• Conveyancer applies to the Deeds Office to register the approved GP; the original title deed of the project site is submitted with the application  
• Conveyancer requests that a “counter cover file” is opened in which original title deed of project site land is kept |
| Obtain signed sales agreement | Municipality | Conveyancers | • Attorney/conveyancer drafts a suitable Sales Agreement  
• Municipality obtains signature of seller and buyer on the Sales Agreement  
• LUPA: Municipality obtains status affidavit of buyer or buyers, where buyers are partners in married/co-habiting couple |
| Lodge transfer document | Deeds Office | Conveyancer | • After collecting various supporting documents required by LUP or LEFTEA, and vouching for their correctness, the Conveyancer submits transfer documents, and where necessary, a POA to the Deeds Office |
| Register the transfer on the deeds registry | Deeds Office | Conveyancers | • Deeds Office examines transfer documents and registers transfer |

### 5.2 Beneficiary Administration

The legal process described above takes place in the context of a housing subsidy project. The legal process, therefore, has to be carefully co-ordinated with the process of beneficiary administration through which approved beneficiaries are supplied as “buyers” in the legal process. Beneficiary administration also entails placing the beneficiary in a particular subsidy unit.
The beneficiary administration tasks relevant to this Policy are:

a) Selection of beneficiaries;
b) Completion of subsidy application forms by prospective beneficiaries;
c) Submission of the forms to the Province for subsidy approval and receipt of approval results from the Province via the HSS;
d) Allocation of the approved beneficiary to a particular plot in the subdivision;
e) Certification that a beneficiary takes occupation of subsidy unit.

Prior to the signing of the Sales Agreement, the Municipality has to select beneficiaries for the project/subdivision. Only households which the Municipality approves as beneficiaries can receive the subsidy. Sales Agreements that are signed by the parties prior to subsidy approval need to be conditional upon approval. The number of the erf to be “sold” (and transferred) to the beneficiary needs to be included within the Sales Agreement, and thus a process through which plots are allocated to beneficiaries needs to occur.

Certification by the Municipality, that a unit is being occupied by the beneficiary of the unit/serviced plot, is an important process within a subsidy project. After occupation, the Municipality loses substantial control over who actually occupies the unit, but if the unit is not transferred, is still required to transfer the unit to the beneficiary as approved. Furthermore, the municipality is responsible for updating the transfer documents if there are status changes within the beneficiary household before transfer occurs. Some changes in the household may spark contestations over who has rights to the unit, and if the unit remains un-transferred, the Municipality become involved in resolving the contestation before transfer can occur.
5.3 Process of transferring plots to beneficiaries

The entire legal process and its relationship to beneficiary administration is depicted in Figure 1.

**Figure 1: Legal and beneficiary administration processes**

In Figure 1, the vertical axis represents time and runs from top to bottom, although it is not to scale, while the succession of arrows indicates the sequence of steps required to achieve a transfer of property.
The legal process is indicated by the boldly outlined boxes i.e. the column of boxes running down the right of the figure together with the step “sign Sales Agreements” depicts the legal process. The signing of Sales Agreements is depicted as a parallel vertical box to the side as the process of getting sales agreements signed can occur in parallel to a number of legal steps.

The beneficiary administration process is depicted by the column of boxes on the right hand side of the figure, with the “allocation of plots” box in parallel indicating that plot allocation can occur in parallel with other process.

There are a further three processes on the figures which can occur in parallel: “peg plots”, “address servitudes etc.” and “obtain POA or acquire land”. These processes are key requirements for the legal process.

Given that the vertical axis is time, the top of a process box indicates when the particular process can commence in relation to others, while the bottom of the box indicates when the process needs to stop. The dotted horizontal lines joining largely non-legal process boxes to the legal process running on the right hand side of the figure indicate when the particular non-legal process has to be completed in relation to a particular step in the legal process so that it can feed into that legal process step. Allocation of plots to the beneficiary needs to be completed before the transfer documents are lodged at the Deeds Office as the actual erf number of the plot to be transferred to the beneficiary must be reflected in the Deed of Transfer.

The boxes outlined in dash dots represent processes that are optional for the Municipality, and depend on an earlier choice. For instance, the Municipality can make the choice of pegging all the plots in the subdivision before approval of the GP and submitting survey records of all plots to the SGO for approval of the GP. If the pegs are placed on all the plots before GP approval it will not need to peg its internal plots and submit the survey records at later stage. Alternatively, the placing of the external pegs only of the subdivision upon approval of the GP means that placing the internal pegs and submitting their survey records to the SGO may be acceptable in an incremental fashion, provided the survey records are submitted, approved by SGO and recorded with the Deeds Office before the transfer documents are lodged.

Likewise, if the Municipality does not own the land on which the project is sited, after the development has been approved or does not have a broadly termed POA from the owner, the Municipality will have to get the POA broadened as required or by acquiring the land.
The requirements for each step of the legal process outlined in Figure 1 are captured in Table 5 below, together with further important details about the requirements.

**Table 5: Requirements for the completion of legal process steps**

<table>
<thead>
<tr>
<th>Legal step/result</th>
<th>Requirements for completion of step</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquire land or suitable POA</td>
<td>• Municipality to action</td>
</tr>
</tbody>
</table>
| Approve subdivision or layout plan | • Municipality owns land parcel or has POA from owner(s) to apply for subdivision  
• Subdivision plan or layout produced by planner and land surveyor  
WCLUPA, ACT 16 OF 2014  
• Development consents plus the conditions for consent obtained by developer from all affected authorities  
• Subdivision proposal together with development consents and conditions tabled at the municipal council for resolution  
• Council passes resolution to approve development  
LEFTEA  
• Gazetted approval from the Province to apply for township establishment in terms of LEFTEA (Chapter 2)  
• Application submitted to Province for approval  
• Notification from the Province that application has been successful  
| Approve General Plan (GP)          | • Subdivision or layout plan approved  
• Survey pegs for the outer figure of the subdivision placed and survey records of pegs match adequately with subdivision plan  
• No servitudes on the survey diagram of the project conflict with the subdivision  
| Register the GP (open the township register) | • GP approved  
• Land parcels on which project sited owned by the same owner and if that owner is not developer, POA from owner is obtained  
• Certificates of registered title and/or consolidated title, depending on how the subdivision relates geographically to the land parcel, obtained from the Deeds Office  
• Conflicting servitudes, title deed restrictions, expropriation notices, land claims addressed/removed  
| Obtain signed sales agreement      | • Signature of Municipality and buyer  
• WCLUPA, ACT 16 OF 2014: Recent status affidavit of buyer or buyers, where buyers are partners in married/co-habiting couple |
<table>
<thead>
<tr>
<th>Legal step/result</th>
<th>Requirements for completion of step</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lodge transfer documents</td>
<td></td>
</tr>
</tbody>
</table>
  - Township register is opened  
  - Actual erf number of the plot to be transferred reflected in the signed sales agreement\(^1\)  
  - If land not owned by developer, POA from the owner authorising the developer to sign the transfer documents on behalf of the owner  
  - **WCLUPA, ACT 16 OF 2014**  
    - Transfer documents which consist of i) draft deed of transfer (based on the signed sales agreement and recent, up-to-date status affidavit from buyer) which reflects the transferor (seller), transferee (buyer), date of sale and purchase price as well as details of the property including erf number, extent of property and indicates existing and new conditions and restrictions ii) clearance certificates: SARS “transfer duty receipt” and rates clearance certificate (which is conditional on WCLUPA, ACT 16 OF 2014 section 31(1) clearance certificate from Municipality, Infrastructure Department, certifying that conditions to development have been met.  
    - POA from the Municipality allowing the conveyancer to lodge the document  
  - **LEFTEA**  
    - Draft Deed of Transfer in the prescribed format  
    - Rates clearance certificate but no SARS transfer duty receipt required  
| Register the transfer on the deeds registry |  
  - Conveyancer |

\(^1\) The erf can be referenced by means other than the erf number, although such referencing could create confusion when the deed of transfer, which must use erf numbers, is compiled.
To manage the legal process, it is necessary to set the timelines required for each step.

Table 6 lists the time frames indicated by the SGO and the Deeds Office for certain steps in the legal process for which SGO and Deeds Office approval is required. Some indication of the time scale associated with the other steps is also indicated.

Table 6: Time frames for key legal steps

<table>
<thead>
<tr>
<th>Legal step/result</th>
<th>Time for completion of step</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigation of constraints on project site</td>
<td>Depends on the land parcel and owner</td>
</tr>
<tr>
<td>Acquisition of land or suitable POA</td>
<td></td>
</tr>
<tr>
<td>Approval of subdivision or layout plan by relevant authority</td>
<td>Lengthy often unpredictable process which can take up to 14 months</td>
</tr>
<tr>
<td>Approval of a General Plan (GP) by the SGO</td>
<td>10 working days</td>
</tr>
<tr>
<td>Approval of survey record for internal pegs by SGO (if submitted separately)</td>
<td>10 working days per batch of records</td>
</tr>
<tr>
<td>Registration of the GP (open the township register)</td>
<td>Variable: 7 to 10 working days to 10 to 15 working days</td>
</tr>
<tr>
<td>Signing of sales agreements</td>
<td>Depends on process followed</td>
</tr>
<tr>
<td>Lodging transfer documents</td>
<td>3 – 6 weeks to prepare documents (and obtain the necessary SARS and rates clearances)</td>
</tr>
<tr>
<td>Registering the transfer on the deeds registry</td>
<td>10 to 15 working days after lodging transfer documents at the Deeds Office</td>
</tr>
</tbody>
</table>

5.4 Scheduling the legal process in the context of the housing project

Within the set of dependencies and requirements mapped out in Figure 1 and Table 5 above, which have to be followed for the successful registration of transfer, the Municipality does have some flexibility to sequence of the steps without impacting on the legality of the process and while carrying out the necessary beneficiary administration. The placing of the pegs for the individual plots within a subdivision can occur at any time between the approval of the subdivision and the lodging of the transfer documents. However the steps need to be arranged to give sufficient time for the processes to occur so that transfers take place within 30 days of occupation.
6 Policy Provisions

As mentioned in Section 2, the Policy aims at achieving the timeous transfer of subsidy properties to beneficiaries by reforming, in a targeted manner, the way the Municipality approves, monitors, pays for and measures the performance of subsidy projects.

These changes should prompt:

a) The augmenting and emphasising of certain provisions within the SOPs for Land Acquisition, Project Approval, Project Application and Registering and Updating Projects;

b) Amendments to standard project tranche payment schedule received by the Municipality.

c) Changes to the responsibilities of senior management and the measurement of project performance.

6.1 Existing land rights for land acquisition funding applications

If the Municipality does not own the project site the Municipality may apply to the Province for funding to purchase the site according a two-stage process laid out in SOP Application for Land Acquisition. The SOP requires that the Municipality must submit information about the ownership and zoning of the land parcel for which funding is sought at the first stage of approval i.e. “Conditional Approval”.

There are a range of other land rights issues which may relate to the project site that also might impede the subdivision and transfer of plots to beneficiaries. These issues should be tracked at the second stage of approval (i.e. “Final Approval”) to inform the decision to approve the funding from Province for the acquire land.

To facilitate the identification of land rights and ownership issues associated with the land parcel in question, application for funding to acquire the land at Final Approval should include a Land Rights and Ownership Review Schedule for the land parcel funding at Final Approval stage.

Table 7: Beneficiary administration milestone and supporting document required

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Supporting Documents</th>
<th>Reporting Official</th>
</tr>
</thead>
<tbody>
<tr>
<td>Handover Certificate signed</td>
<td>Documentation required:</td>
<td>Project Manager</td>
</tr>
<tr>
<td></td>
<td>• Project name and number</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Allotment area</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Erf number</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Beneficiary name/s</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Identity number</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Date of signing of the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• occupation certificate</td>
<td></td>
</tr>
</tbody>
</table>
6.2 Increase in the amount retained subject to transfer (i.e. transfer retention amount)

Currently the Municipality retains the amount indicated in the national subsidy schedule to cover the cost of transferring the property created in the project to the beneficiary until the transfer has taken place. This refers to the amount retained subject to transfer as the "transfer retention amount". The provision is detailed in the funding contract entered into between the Municipality and the Province after Conditional Approval.

Because the subsidy amount for transfer is close in value to the actual costs of transfer, Province has indicated the Municipality has little financial incentive to carry out the transfer as the retention amount is set at the subsidy amount for transfer. This lack of financial incentive arises because the physical building processes of service installation and top structure construction, which the bulk of the subsidy is allocated to cover, is not dependent on the transfer of units.

The latest Province Transfer Policy introduces a new approach to retention to address the weakness mentioned above. For each subsidy unit produced in projects Province will withhold double the value of the subsidy amount for transfer until the unit is registered in the name of the beneficiary in the Deeds Office.

To claim the subsidy amount for transfer, and indeed to avoid having double the subsidy amount for transfer being withheld, the Municipality needs to submit a claim through the normal claims process for the transfers that have occurred with evidence that these transfers have taken place. The evidence required is detailed in Table 7 above.

Given that the transfer retention amount may impact on the delivery of units, the Municipality must ensure that all procedures are observed to the satisfaction of Province.

7 PARTICIPATING MUNICIPAL DEPARTMENTS

The process of undertaking the transfer process, extending from the inception to the final handing over and completion report is to be the responsibility of a number of departments within the Municipality. The Department of Human Settlements will be the co-ordinating department with functions being of the various implementing phases being under the control of other departments.
These responsibilities may be summarised as follows:

Table 8: Participating Departments

<table>
<thead>
<tr>
<th>DEPARTMENT</th>
<th>INFORMATION FROM</th>
<th>PROCESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Settlements</td>
<td>Council and community</td>
<td>Inception of development Obtain approval from Council to proceed</td>
</tr>
<tr>
<td>Planning</td>
<td>Conception planning with consultants</td>
<td>EIA, rezoning, subdivision approval and land use Appointing Town Planners, Land Surveyors and other specialist services</td>
</tr>
<tr>
<td>Human Settlements</td>
<td>Planning &amp; Consultants</td>
<td>List of beneficiaries Geotechnical Report Funding application to Province Appoint consultants for Project Management and design and supervision</td>
</tr>
<tr>
<td>Corporate Services</td>
<td>Planning &amp; Human Settlements</td>
<td>Processing purchase of land Appoint conveyancers Ensure that conveyancers obtain Deeds of Sale</td>
</tr>
<tr>
<td>Infrastructure (Civil &amp; Electrical)</td>
<td>Appointed consultants</td>
<td>Approve designs, supervise contract, ensure Geotechnical Reports (Phase 2) and stormwater reports complete for submission to NHBRC Compliance with EA (ROD) conditions Clearance certificate for project completion</td>
</tr>
<tr>
<td>Human Settlements</td>
<td>Planning &amp; Corporate</td>
<td>Screen all applicants through Province Submit approved beneficiaries to conveyancer Monitor conveyancer signing up the Deeds of Sale</td>
</tr>
<tr>
<td>Human Settlements</td>
<td>Infrastructure &amp; Planning</td>
<td>Construct Tap Structures Community facilitation</td>
</tr>
<tr>
<td>Financial Services</td>
<td>Conveyancer &amp; Human Settlements</td>
<td>Financial facilitator Collect beneficiary contributions from conveyancer and assistance from Human Settlements</td>
</tr>
<tr>
<td>Corporate Services &amp; Human Settlements</td>
<td>Conveyancer</td>
<td>Hand over Title Deeds to beneficiaries Reports to Council &amp; Province monthly on transfer progress Closing out report</td>
</tr>
</tbody>
</table>
### Summary of Processes Required for Transfers

The summary of processes below is required with the allocation of beneficiaries and the transfer process which is in line with the requirements specified by the Provincial Department of Human Settlements.

<table>
<thead>
<tr>
<th>STAGE</th>
<th>ACTION</th>
<th>VERIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial application for project status</td>
<td>Determine a potential list of possible beneficiaries, <strong>plus 20% more to cover non-qualifiers, for the 60%:20%:20% allocations</strong></td>
<td>Mayoral Committee to approve list</td>
</tr>
</tbody>
</table>
| Funding application from Province | 1. Consult with the list of potential beneficiaries and interested and affected parties  
2. Sign up all on the proposed list and obtain all their details such as names, spouse, children, ID for adults, current salary slips certified, present residential address, disability status, members who have special needs, etc.  
3. Submit to Province for full verification. This process can take up to **two months**.  
4. Allocate a beneficiary to a specific erf which is required as a condition of funding approval.  
5. Establish special needs such as disabilities where extra funding and modified house construction necessary.  
6. Appoint conveyancer  
2. Officials  
3. Province to verify and give reasons for rejection of non-qualifiers  
4. Notify MAYCO of the final list of beneficiaries  
5. Corporate Services  
6. Notify Province and apply for additional funding for disabled persons.  
7. Housing officials. |
| During construction of roads and services | 8. Conveyancers to compile all documentation necessary to commence transfers. This should be completed at a single point on a specific day over a weekend.  
9. Commissioner of Oaths to verify documentation | 8. Officials to monitor this process and conveyancer to include status in monthly report.  
9. CoO to be on site for process |
| On completion of the servicing of the roads and services. | 10. Municipal Engineers to issue the Rates Clearance Certificate to the Conveyancer.  
11. Conveyancer to lodge applications with supporting documentation to the Deeds Office. Process should take **21 days per batch**. Batches may be split in case errors in some documents hold back whole process.  
12. On completion conveyancer to be paid | 10. Housing officials or consultant to obtain certificate.  
11. Conveyancer to provide monthly reports of progress to the Municipality Housing & Property.  
12. Notify MAYCO of completion of project and transfers. |
<table>
<thead>
<tr>
<th>STAGE</th>
<th>ACTION</th>
<th>VERIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before completion of the house construction</td>
<td>1. Officials and consultant to conduct Consumer Education with the future owners to explain ownership, maintenance responsibilities, refuse collection and other matters.</td>
<td>1. Verify process by the officials. Full minutes of these meetings to be kept. Attendance slips signed.</td>
</tr>
<tr>
<td>Handover of house to the beneficiary</td>
<td>1. On presentation of slip handover of key <strong>plus the Title Deed</strong> and receive a signed form of acceptance of the Title Deed. 2. Municipality/consultant to compile a Closing Report including Title Deed status</td>
<td>1. Conveyancer to submit the signed form of acceptance to the Municipality. To provide to Housing &amp; Property Sections a final completion report of the Title Deeds. 2. Municipality to submit full report to Province for clearance of project.</td>
</tr>
</tbody>
</table>