

The National Housing Code

FINANCIAL INTERVENTIONS

Accreditation of Municipalities

Enhanced Extended Discount Benefit Scheme

Individual Subsidies

Operational Capital Budget

Integrated Development Plans Part 1

Integrated Development Plans Part 2

Provision of Social and Economic Facilities

Rectification of Pre-1994 Residential Properties

Subsidy Quantum - Financial Intervention



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REPUBLIC OF SOUTH AFRICA

Volume 3

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ACRONYMS

Discount Benefit Scheme	DBS
Enhanced Extended Discount Benefit Scheme	EEDBS
Member of the Executive Council	MEC
Provincial Departments responsible for human settlement	PD
Phasing Out Programme	POP

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Enhanced Extended Discount Benefit Scheme

1 Overview

2 Policy Prescripts and Provisions

3 Application Procedures

4 Financial Arrangements

5 Implementation Guidelines



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1 OVERVIEW

With the post-1994 approach to achieving equity and the National Government's desire to normalise the housing market, various policies were initiated to encourage the transfer of publicly owned housing stock to qualifying occupants.

- **The Discount Benefit Scheme (DBS)** was instituted in terms of Section 3(5)b of the Housing Act, No. 107 of 1997 (Act No. 107 of 1997), as a subsidy mechanism to transfer free-standing houses to their qualifying occupants.
- **The Phasing Out Programme (POP)** was instituted in terms of Section 14(9) of the Housing Act 1997 in order to normalise housing administration and the housing environment. It is also used to phase out all previous (pre-1994) housing subsidies on public housing stock and to transfer housing stock for ownership.

The principles and objectives of the POP and DBS policies have been found to be inadequate to deal with the wide range of complex issues encountered in their implementation.

As a result a new policy framework and implementation guidelines for an Enhanced Extended Discount Benefit Scheme (EEDBS) was put in place to support decisions made regarding the transfer of pre-1994 housing stock.

The EEDBS supersedes all other policies and implementation guidelines relating to the DBS and POP.

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2 POLICY PRESCRIPTS AND PROVISIONS

2.1 POLICY INTENT

The EEDBS is intended to stimulate and facilitate the transfer of public housing stock to qualifying occupants, by using subsidisation up to the full prevailing individual housing subsidy amount.

2.2 PROGRAMME PRINCIPLES

2.2.1 FUNDAMENTAL PRINCIPLES:

- Equity – recipients of the EEDBS should, as far as is reasonably possible, not remain in situations more advantageous than those enjoyed by recipients of other housing subsidies and housing programmes.
- Secure individual ownership – the aim of the EEDBS is to ensure the occupants of public housing stock are provided with the opportunity to secure individual ownership of their housing units.
- Defined responsibility and support – the various roles and responsibilities of all the key role-players are outlined and defined for the various processes to be efficiently completed.
- The full prevailing Individual Housing Subsidy will apply to qualifying EEDBS beneficiaries.

2.2.2 GENERAL PRINCIPLES

- The occupant may not accept poor quality housing stock and she/he may not be forced to pay for the upgrading/improvement of such housing stock.
- All housing stock must be channeled through the normalisation and regularisation processes.
- The transfer of the properties needs to be decided on through consultation between the authorities and the occupants.
- The EEDBS only applies to transfer of housing units to individuals/households.
- The authorities must ensure that where applicable, *inter alia*:
 - Stands are subdivided.
 - Suitable servitudes are in place.

- Town registers and sectional title registers are opened and in place for occupants to obtain individual ownership and title; and
- The *duplum rule* of common law must apply, whereby interest owing which exceeds the capital sum may not be recovered, but must be written back.

2.3 ELEMENTS TO BE PHASED OUT

2.3.1 HOUSING SUBSIDIES AND PROGRAMMES

Qualifying housing stock includes housing units created by/in terms of:

- Previous own affairs departments.
- All national departments that built housing under the previous government.
- Previous dispensation provincial administrations.
- Former local municipalities.
- TBVC-states.
- Self-governing territories.
- Publicly owned service sites (POS-Sites).
- First, second and third directive housing stock.
- Circular R293 of 1962 housing stock, (local land and housing delivery ordinances within 'Bantustans' and other 'Black' areas).
- Housing stock in the South African Development Trust areas that often overlap or include R293 housing stock.
- Previously rented family houses identified under the 1983 National Sales Campaign.
- Sales and rentals based on Circular No. 4 of 1987 and/or similar former schemes.
- National Housing Fund loans that include:
 - All municipally or provincially developed housing stock.
 - Housing stock that was disposed of on a deed of sale basis.
 - Individuals that acquired ownership of their properties through individual loans from provinces or local authorities.

- Permits to purchase or rent houses in former black townships.

2.3.2 HOUSING STOCK INCLUDES

- Free standing houses – individual housing units on defined and designated pieces of land.
- Semi-detached houses – housing units that share common walls with their neighbouring units.
- Terraced houses (row houses) – housing that have at least two common walls, usually on either side of the house, with its neighbours.
- Duplex houses – generally referring to housing units that have two dwelling spaces one on top of the other but sharing certain facilities e.g. front doors and entrance ways.
- High rise flats – referring to flats/apartments that are more than four-storeys high and require elevators.
- Low rise flats – buildings that are less than four-storeys high.
- Communal housing – institutions/buildings that share facilities i.e. each household/individual may have its own sleeping quarters but cooking, washing, and socialising facilities are shared between all of the people who live in the building.

NB: The housing typology may affect the phasing out option.

2.3.3 DEBTS

The following types of housing debts are to be phased out:

- **Loan debtors** – households and/or individuals who received loans from an authority for the building costs of the housing unit are responsible for their own rates, taxes, penalty interest and insurance. The arrears are comprised of the loan that has been taken out with the authorities and the interest that has accrued on such a loan.
- **Sales debtors** (including suspensive or deferred sales schemes such as installments sales) – households and/or individuals that have already acquired properties but still owe balances on selling prices, insurance, rates, accumulated interest and taxes to provincial governments and/or municipalities.

- **Rental debtors** – households and/or individuals responsible for rental arrears. In municipal and PD housing stock, rentals include the maintenance, municipal services, rates and taxes, as well as any other associated costs. In this instance, the tenant will not pay for them separately. A tenant is also responsible for any damage to the property that may occur subsequent to the conclusion of the sale agreement. Rentals payable by tenants are redeemable up to the effective date of sale, i.e. the date of signature on behalf of the public sector owner.
- **All persons who have already received the DBS of R7 500** for their housing units but are still repaying the resultant loan (to the relevant authorities as prescribed in Circular 10 of 1993 and the POP, as approved on 1 May 2000). If these persons are eligible in terms of the beneficiary criteria, they may receive the full individual housing subsidy less the R7 500 already received.
- **Sectional title schemes** - in which occupants have specific loan arrangements with the relevant authorities.
- **R293 towns and occupants with relevant related leaseholds** - are eligible for the EEDBS.

2.4 WHO WILL BE ASSISTED?

2.4.1 QUALIFYING BENEFICIARIES

A beneficiary must be a natural person, who:

- has a direct housing arrangement with the State;
- has benefited from any of the housing subsidies, housing programmes or schemes outlined in 2.3.1 and 2.3.3 above;
- has an outstanding debt with the municipality or the PD in terms of 2.3.3 above;
- has previously been confirmed as competent to contract or, in the case of new contracts, considered to be competent;
- has some form of legally binding contract with the relevant authority; and
- is a *de facto* tenant, where the registered tenant cannot be found and the individual and/or household occupying the housing unit is

not the registered beneficiary/tenant but can prove that she/he has either:

- A contract with the legal owner/tenant, or
- where she/he can demonstrate that she/he has consistently taken on the responsibilities of a tenant and acted accordingly.

2.4.2 NON-QUALIFYING BENEFICIARIES

The following categories do not qualify for the EEDBS:

- Sales debtors or debtors who have already settled their indebtedness in full.
- Retrospective claims for cash payments by persons who have purchased and taken transfer without claiming the R7 500.00 discount benefit will not be considered.
- Sales to tenants and/or other persons who do not qualify for the EEDBS. These sales must be concluded in terms of the provisions of Section 14(3)(b) of the Housing Act (1997 No. 107 of 1997), and the provisions of the applicable National Housing Programme. If this is not possible, the property should be sold at a fair market value or, in the best interest of the State at a price approved by the relevant Member of the Executive Council (MEC). The EEDBS will not be available in such instances but beneficiaries may make application to the PD for alternative housing subsidy options.

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3 APPLICATION PROCEDURE

3.1 APPLICABLE DATES

Some of the applicable dates to be considered include, but are not limited to:

- State-financed housing units constructed or contracted, on or before 15 March 1994 (i.e. the date of the implementation of the Housing Subsidy Scheme).
- Post-1994 occupants will be considered if they can demonstrate any of the following legal claims on the property:
 - For “owned” property, in the case of death or insolvency of the legal owner - prior to the application for the EEDBS, if it is discovered that:
 - a the purchaser is deceased and/or;
 - b insolvent and a balance remains owing to the authority (who extended credit by allowing repayment of amounts owing over periods appropriate to the circumstances but not exceeding 20 years). A claim may be instituted against the estate of the deceased/insolvent party. The claim against the estate serves as the process whereby the legal inheritors of the estate are able to claim the property that is rightfully theirs; and
 - c if more than one party lays claim to the property then a ‘family title’ may be considered. In cases where the extended family claims a right to the property, mediation and arbitration procedures must be used to reach a resolution.
 - For “rented” property - where the tenant of record is deceased, his/her widow, widower or child in occupation, may at the discretion of the authority, according to its own rules of succession, be allowed to enter into a new sales agreement, where the EEDBS may apply.

If neither of these situations exists - then further options can be considered such as:

- i Other types of succession that can be dealt with in terms of existing prescripts and common law principles.
- ii Situations in which informal contracts with a landlord exist. In such cases an enquiry similar to one in the settlement of a dispute regarding succession will be applied by taking

into account other factors such as the duration of tenancy, extent of compliance with tenant's obligation and any other factors that might be relevant to the determination of rights. Where the duration of tenancy and extend of compliance has been established, there is no need to conduct an enquiry; or

d at the discretion of the relevant housing authorities.

- Any dispute regarding succession must be approached in a similar way to that contained in the Conversion of Certain Rights to Leasehold and Freehold Act, 1988 (Act No. 81 of 1988). An enquiry procedure including community involvement, that could recognise an existing informal contract, must be instituted together with rules of Intestate Succession for deceased estates.

3.2 THE PRE-EMPTIVE OCCUPANCY CLAUSE

Section 10A of the Housing Act, 1997 (Act No. 107 of 1997), must be dealt with as follows:

- Section 10A shall apply to all existing sale agreements where the tenants did not acquire ownership prior to 1 February 2002; and
- Where a new sales agreement has to be concluded for the transfer of the property to an occupant.

In terms of section 10B(5), an MEC may grant conditional or unconditional exemption from the restriction on the involuntary sale or alienation of state-subsidised housing in accordance with the rules of exemption as promulgated by the Minister by notice in the Government Gazette.

3.3 CALCULATION OF SALES PRICE

- The capital amount is made up not only of the selling price less the deposit paid, but includes amounts which have been advanced for rates, insurance premiums or other disbursements under the sales agreement, which allow interest to be charged thereon.
- Where purchasers have requested transfer under the POP and have made deposits or issued guarantees to cover the remaining balances, they may either continue with those transfers or deal with them in terms of the EEDBS framework. In the latter case, deposits received, must be refunded.

- The calculation of the sales price must include the balance of the capital still to be paid and other arrears that have accrued to the occupant applying for the EEDBS.

In addition, the calculation of the sale price is influenced by the following elements:

3.3.1 CATEGORIES OF OCCUPANTS

The sales price is calculated for three categories of occupants:

- Existing occupants who wish to purchase, i.e. households or individuals who are currently paying off loans or are tenants.
- Occupants who do not qualify for the EEDBS; and
- Potential tenants - households and individuals who could be attracted to the housing stock once it is rectified.

3.3.2 FREE-STANDING HOUSES

Pre-July 1983 housing stock:

- In respect of freestanding houses and in the case of pre-July 1983 National Sales Campaign housing stock, the listed selling price (after subtracting allowances made for structural defects as derived from the directives of Circular 17 of 1983 introduced by the former National Housing Commission and/or that of the former “Own Affairs Housing and Development Boards”) must be used;
- The cost of any subsequent improvements to the site and the top structures completed by either the PD or the municipality may be added to the listed selling price determined above;
- For properties in former black municipality areas the sales price will include, as provided in Circular 17 of 1983, township establishment cost, surveying costs, water meter connection and land price at R1.50 per m² (or other figures as might have been fixed in a particular case with regard to infrastructure installation); and
- In the case of pre-July 1983 National Sales Campaign housing stock, the listed selling price (after subtracting allowances made for structural defects (not normal wear and tear) as contained in Circular 17 of 1983) and adding to that the proportionate cost of any subsequent improvements to the site and the top structures).

Post-July 1983 and other housing stock:

- In respect of individual houses, other than the pre-July 1983 National Sales Campaign housing stock, the historic cost of the serviced site and the structure thereon apply; and
- The historic cost is calculated in all other cases, as the cost of the serviced site and the top structure thereon.

3.3.3 FLATS, CLUSTER HOMES AND ROW HOUSES

- For flats, cluster houses and row houses an appropriate allocation should be made of the historic cost of each unit or the listed selling price and in the case of the National Sales Campaign housing stock of the serviced site and the top structure thereon;
- The cost should be allocated in proportion to the respective floor areas of the housing units. If it can be shown that some other method of calculation would produce a more equitable result, such proposed alternative selling prices, with supporting calculations, must be submitted to the relevant MEC for consideration and approval;
- Prior to any offers being made to the PD or relevant municipality for the sale of multiple units, the realistic cost of maintenance, repair, and administration of multiple-unit blocks must be taken into account. These costs must be made known to the existing occupants. Public sector owners must be realistic about the possibility of a block being suitable for conversion to sectional title and any such offer must be made in line with the Sectional Title Act, 1986 (No. 95 of 1986);
- If a block is suitable for conversion, and the relevant authority has decided and approved the suitability of the project, then an offer should be prepared, in consultation with the tenants and in compliance with applicable statutory requirements;
- The offer should be open for a limited time with the proviso that the project is viable and consultation has taken place with the relevant authority and role players;
- If the housing stock is not suitable, the tenants should be informed why they cannot receive the EEDBS; and

- All decisions must be effectively communicated through the appropriate channels.

3.3.4 CASES WHERE THE SELLING PRICE IS GREATER THAN THE EEDBS SUBSIDY AMOUNT

In instances where the selling price is greater than the EEDBS, any balance remaining must be financed, by using the beneficiaries' own resources, which may include mortgage loans.

3.3.5 HIGH VALUE HOUSING STOCK AND THE EEDBS

- In situations where the value of certain housing stock is higher due to its geographical location, size, condition, quality, or some other outstanding feature, a decision would have to be taken, in the best interests of the relevant authorities and in line with the principles of equity, as to what to do with the said housing stock; and
- In the determination of the selling price, the options outlined in the original DBS shall apply. However, the municipality or the PD shall have the discretion to decide on the alternative selling price options in consultation with and on approval by the Municipal Council or the MEC. Such decisions will be dependent on good cause shown for the alternative selling price.

3.4 TRANSFER COSTS

- In cases where the services of a conveyancer are required, the authorities will themselves handle the application, the identification procedures and the sale.
- Thereafter, the services of a conveyancer will be sought, to register transfer of the housing unit and of any mortgage bond, if required.
- PDs should subsidise and make provision in their budgets for payment of transfer costs as well as the lodgement fee for the indigent. The subsidies so determined will depend on the negotiated professional fees of conveyancers.
- Any balance of the transfer costs must be negotiated between the public sector owner, the conveyancer and the beneficiary.
- In cases where transfer can be affected without the use of a conveyancer, exemptions must be applied at the discretion of the appropriate official.
- PDs and municipalities are obliged to pay assessment rates and related charges on their properties until date of transfer.

3.5 PARKING OR PROVISION OF DEBTS

The decision about what should be done with the various debts accrued is influenced by whether the housing stock is municipally or provincially owned.

- **PD owned housing stock** – is dictated to by the provisions for write-offs as made within the Public Finance Management Act, 1999 (No. 1 of 1999), read with Treasury Regulation 11. These two pieces of legislation prescribe the steps to be taken if an amount, owed to the State, is deemed irrecoverable and it is shown that all reasonable steps have been taken to recover the debt. Treasury Regulation 11.4 provides that an accounting officer may only write off a debt owed to the State if she/he is satisfied that all reasonable steps have been taken to recover the debt or that the recovery of debt would be uneconomical. All debts written off must be in accordance with a write off policy and must be disclosed in the annual financial statement.
- **Municipal housing stock** – even though there are no similar provisions in local government legislation, there is no counter argument why the same provision cannot be used to write off debts that the municipality may not be able to recover. The Municipal Systems Act, 2000 (No. 32 of 2000) (Section 98) states that a municipality can:

"1) Adopt by-laws to give effect to the municipality's credit control and debt collection policy, its implementation and enforcement.

2) By-laws in terms of subsection (1) may differentiate between different categories of ratepayers, users of services, debtors, taxes, services, service standards and other matters as long as the differentiation does not amount to unfair discrimination."

Sections 8.9 and 8.10 of the Municipal Systems Act, 2000 (No. 32 of 2000) provide guidelines and proposals on dealing with municipal debt. Therefore, the decision on debt write off will be left to the municipal authority based on what is appropriate in the particular situation and context.

3.6 RENTAL ARREARS AND DEBT RECOVERY BY MUNICIPALITIES

- In cases where households are in arrears but can afford to pay back the rental arrear amounts over a period of time, they are required to sign an "acknowledgement of debt" with the municipality that specifies the amount to be paid back and the conditions under which it can be paid. The arrear amount is 'parked' i.e. held over and is paid off over a five (5) year period at 0% interest.

- In instances where households are in arrears but cannot pay back the rental arrear amount for any reason, including and especially indigent people, then a “restriction of sale” clause must be attached to the property by the municipality, i.e. the household will not be required to leave the premises due to non-payment but cannot sell the property until the arrear amount is settled or, households are right sized into alternative accommodation.
- The Department of Cooperative Governance and Traditional Affairs has a series of Indigency Guidelines that should be used as a guide for municipalities to design their own indigency policies that address their particular situations.
- In addition, the communication strategy adopted should make it clear that this is a one-time only offer and will not be repeated in the future.

3.7 MUNICIPAL SERVICES, UTILITIES AND RATES AND TAXES

- Other debt and/or arrears associated with municipal housing stock include municipal services, utilities and rates and taxes that can affect the transfer process, if in arrears.
- In circumstances in which the rates, taxes, amenities, utilities and associated costs are not included in the monthly costs, it is desirable that the collection of municipal charges and rates (if any) be separated from the registration of transfer or the actual cost that is directly related to the housing unit itself, in an attempt to expedite matters.
- In order to limit the further accumulation of arrears, the relevant municipality may utilise the municipal indigent policy to assist beneficiaries who cannot afford their municipal rates and services.
- Options for the treatment of water and electricity debt recovery, on municipal housing stock, may be exercised as follows:

Water Arrears

This is an alternative of what may be considered in the absence of a National Water Policy. It must be noted that this is a proposal and not a provision within the document. Two options are proposed:

- In cases where households can afford to pay the amounts owed, the arrear amount is parked and a repayment schedule is agreed upon and followed.
- If non-payment persists then a water flow limiter can be installed (for the account of the registered owner of the unit) and the household will only be entitled to the basic six (6) free kilolitres and will have to buy coupons should they require more water.
- In cases where the household is indigent then the water policy needs to be closely aligned with the authority's indigency policy and the entire arrear amount can be parked and gradually written off through an incentive system over a period of time. For example, meters can be installed to ensure that indigent households have access to the water they are entitled and at the same time debt can be written off over a five (5) year period, where each year one-fifth is written off, if the household either consistently pays for water and/or they do not tamper, meddle, or breach the water source, which would result in the record of arrears remaining on their profiles.

Electricity Arrears

This provides an option for the collection of electricity arrears. It must be noted that this is a proposal and not a provision within the document.

- Electricity arrears are generally divided into arrears and penalties.
- It is proposed that an agreement is reached between the appropriate authority and service provider and penalties are written-off completely but arrears are recovered.
- Further, an electricity meter can be installed (for the account of the registered owner of the unit), which will use pre-paid coupons and part of the credit can be used to recover the arrears and the remaining amount can pay for the actual electricity consumption.
- If this option is to be used, then it has to be accompanied by an educational programme that explains the use of the electricity meter, the amount agreed upon that is to be recovered and what percentage of the pre-paid coupons is to be used for actual consumption.
- In a new sales agreement the following wording should be added to the usual "voetstoots" clause:

'The purchaser acknowledges responsibility for the electrical installation and should any addition or alteration be carried out thereto, she/he will, in accordance with the National Electricity Regulations, be required to obtain a certificate of compliance for the whole installation'.

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4 FINANCIAL ARRANGEMENTS

4.1 EEDBS TREATMENT IN THE MUNICIPAL FINANCIAL RECORDS

The Housing Act, 1997 (No. 107 of 1997), on 1 April 1998, extinguished the debt of municipalities towards the former National Housing Board in respect of any project or scheme, or individual dwelling which was financed by means of a loan, advance or other finance which was approved in terms of the previous housing and development legislation contained in Section 14(4) of the Housing Act, 1997. A municipality should therefore deal with the EEDBS, in its financial records, on the following basis:

- No cash should be paid to purchasers or borrowers.
- Municipalities, which have undergone re-organisation and/or have had name changes, should ensure that the title deeds to housing units are endorsed accordingly.
- The municipality as the owner is authorised to grant the EEDBS to the debtor by way of a reduction of the selling price, or outstanding loan balance, as the case may be. The lease will terminate and the purchase obligations commence upon the conclusion of the sale agreement.
- On completion of an agreement the municipality, as the owner, should deal with the EEDBS in its financial records on a basis reflecting the fact that the properties concerned are the unencumbered assets of the municipality.
- The balance sheets of the authorities concerned will presumably show such housing assets at nominal valuations, with equivalent amounts of capital reserves on the liabilities side. The granting of the EEDBS should therefore be implemented through journal entries, to reduce the assets and the reserves by the appropriate amount, and in accordance with the principles of generally accepted accounting practices pertaining to these authorities. Proper provision should also be made for the inspection and audit of:
 - Applications made for the EEDBS.
 - Completed transactions; and
 - Transfers.

4.2 CALCULATION OF THE EEDBS AMOUNT FOR THE DIFFERENT INCOME CATEGORIES

The calculation of the EEDBS amount and the quantum of the write off are based on the income categories of the households as follows:

- i. Persons in the R0 – R1 500 income category:
 - Write-off of all debts and arrears using the full prevailing individual subsidy.
- ii. Persons who earn between R1 501 – R3 500:
 - The lesser of the full prevailing individual housing subsidy amount on the outstanding balance; and
 - The writing off of any further outstanding balance on the purchase price and arrears, if such exist.
- iii. Persons who earn an income between R3 501 – R7 000, will receive:
 - The lesser of R7 500 on the outstanding balance.
 - The write off of 50% of the remaining arrears; and
 - The remaining outstanding balance must then be financed by other means available to the beneficiary and may include a personal bank loan.
- iv. Persons who earn over R7 000.00 per month will receive R7 500.00 or the remaining outstanding balance, whichever is the lesser. In cases where the outstanding balance exceeds R7 500.00, the balance must be financed by other means available to the beneficiary and may include a personal bank loan.

Table 1: Summary of the EEDBS calculation for different beneficiary income groups

Income band per month per household	Rental/Loan Arrears	Penalties and charges	Explanation
R7 001 and above	Recovery	Recovery	Maximum R7 500 applies for write off with private finance for the excess of any loans/mortgages or market related rentals
R3 501 - R7 000	50% write-off / 50% recovery	50% Write-off / 50% recovery	Maximum R7 500 applies for write off; 50% of remaining arrears write-off in terms of Sections 1.10 to 1.12. Section 1.8(d) applies where necessary

R1 501 - R3 500	Write-off	Write-off	Individual subsidy amount applies Provision for further write off of up to R2 479 Write-off in terms of Sections 1.10 to 1.12 Section 1.8(d) applies where necessary
R0 – R1 500	Write-off	Write-off	Full individual subsidy amount applies Write-off in terms of Sections 1.10 to 1.12 Section 1.8(d) applies where necessary

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5 IMPLEMENTATION GUIDELINE

5.1 NORMALISATION OF HOUSING STOCK

5.1.1 IDENTIFYING THE RELEVANT HOUSING STOCK

The following minimum information must be available to take a decision on how housing stock will be dealt with:

- Clarity on what is PD and what is municipally owned housing stock. In cases where no such information exists it must be attained.
- The actual number of housing units per building/projects etc. must be on record.
- A register of the condition, quality and maintenance needs of each of the buildings and each of the housing units.
- All the associated costs/debts/arrears that exist for the housing unit per building/project.
- Free-standing housing units are generally sold “voetstoots”. Rectification and assessment procedures do not apply to these houses.
- In cases where records do exist, verification procedures must be put in place. These will take the form of actual visits to the appropriate sites, where detail of the unit will be recorded i.e. size, m², condition/quality, tenant etc.; and
- The costs associated with the normalisation of the relevant housing stock should be borne by the provincial authority. The information from this process will be effectively used by the local and provincial authorities, which will jointly decide on what the future of the housing stock will be. This is to ensure that there is a coherent policy approach and application to public housing within areas that have both PD and municipal housing stock.

NB: Housing stock may not be considered saleable and may have to be rectified or, retained by the authority for situations in which the dwellings:

- a. Have no separate ablution facilities, services e.g. running water or electricity; and*
- b. Constitute a health and safety risk.*

5.1.2 REGULARISATION OF HOUSING STOCK

- Care must be taken to establish the identity and entitlement of a person claiming the EEDBS. If there appears to be any doubt or dispute,

thorough and transparent enquiry procedures, including community involvement where appropriate, must be instituted.

- The following circumstances must be borne in mind and be read in conjunction with 2.4 above:
 - Common law and statutory provisions governed property ownership and land title registration in areas previously under the jurisdiction of the old Own Affairs Administrations.
 - Formal agreements of lease were concluded and these will have included clauses prohibiting sub-letting without the lessor's written consent.
- In order to determine the rights of tenure under the various tenure systems, the Conversion of Certain Rights to Leasehold and Freehold Act, 1988 (Act No. 81 of 1988) should be applied in terms of which an investigation will be undertaken to determine who the persons currently entitled to certain properties comprising municipal housing stock are, where after the leasehold rights/ownership rights will be allocated depending on whether the township register has been open or not. The areas in which this investigation has to be taken are contained in a schedule to the Act. Whether a person is entitled to ownership, leasehold rights or statutory rental is dependent upon which regulation a particular permit has been issued under.
 - A permit holder, under Regulation 6 or 8 of the Township Regulations (Government Notice R1036 of 1968), has already acquired rights to her/his house. The PDs are required, by statute, to deal with the conversion of such rights to ownership or, as an intermediate step, where a township register has not yet been opened, to leasehold or, subsequent endorsement for ownership. An individual and/or household in this category have in effect already purchased the property and there is no need to enter into a new sales agreement and consequently the EEDBS will not apply.
 - It must be noted, however, that she/he is entitled to the EEDBS on any unpaid balance of a loan on the selling price, as well as, of a loan granted for self-building purposes. The PD will bear the cost of issuing leasehold or, freehold titles to

Regulation 6 and 8 permit holders under the Conversion of Certain Rights to Leasehold and Freehold Act, 1988.

- A tenant, under Regulation 7 of the Township Regulations, has not acquired any formal rights to the property that she/he occupies under a type of statutory tenancy. The EEDBS will apply on the selling price after a sale agreement has been concluded.
- Regularisation of unlawful occupancy can be permitted in the following circumstances:
 - For an applicant with dependents in occupation, where neither the applicant nor her/his dependents had previously been tenants or purchasers of accommodation provided by any organ of State.
 - A person who has been deserted by her/his spouse, where such deserting spouse is a tenant of record.
 - A tenant of record who has applied for relocation to other premises and has subsequently taken occupation thereof and returned the previous housing unit to the PD and municipality.
 - Tenants of record that have arranged and concluded unauthorised exchanges of housing units.
 - A person/household that obtained occupation by peaceful means such as by a sub-lease or the purchase of a purported right of occupation from a tenant of record; and
 - In any other circumstance that the PDs and municipalities' in their discretion deem fit.

5.1.3 REGULARISATION AND EVICTION

- Situations may arise whereby households who have a legal claim to the housing unit in which they live but are unsuitable or do not qualify as occupants of the housing unit, in terms of the policy procedures or falls into one of the following categories:
 - The person cannot afford the existing property and must be assisted through other housing programmes.
 - The occupant needs time to adjust to start paying again after a period of non-payment.

- Assistance is required to procure an alternative affordable house.
 - A sale is terminated and substituted, as a temporary measure, by a month-to-month lease at an agreed occupational rent until relocation or the required eviction order has been obtained.
 - The household or individual may not 'queue-jump' in cases where they are eligible for and request a 'give-away'/capitally subsidised home but will either have to be temporarily rehoused or will have to be put on the relevant housing waiting list. If this is not done, then public housing tenants may unfairly benefit; and
 - In all such cases, the relevant authority is required to assist the occupants to find alternative accommodation.
- A tenant's lease cannot be legally terminated unless the tenant has defaulted or is in breach of contract. Authorities are urged to consider a reservation of a percentage of new government housing developments within areas that contain public housing for households and individuals that have been evicted from public housing stock.
 - In any eviction of an unlawful occupier, an eviction may only be carried out in terms of Section 4 of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 1997 (No. 19 of 1997) or other relevant and prevailing housing legislation. The land owner or person in charge of the land must at least fourteen (14) days before the hearing and through a court, serve a written and effective notice of the proceedings on the unlawful occupier and the municipality that have jurisdiction over the land.
 - The Court may grant an order for eviction, if it is just and equitable, after considering all the relevant facts including whether the illegal occupier has occupied the unit for less than six (6) months. Where the illegal occupier has occupied the unit for more than six (6) months at the time of the proceedings, the Court may grant an order for eviction, if it's just and equitable, including whether alternative accommodation is available or, has been made available by the municipality or PD for relocation of an unlawful occupier. Properties repossessed through eviction should be sold in accordance with the

provisions of Section 14(4)(b) of the Housing Act, 1997 (No. 107 of 1997), or, by public auction.

5.2 INDIVIDUALS WHO DO NOT WISH TO PARTICIPATE

During the regularisation process occupants who do not wish to participate in the EEDBS will be identified and their existing contracts, whether they are rental or sales agreements, must be acknowledged and honoured.

5.3 RESOLUTION OF DISPUTES

- All disputes can be resolved through a specially constituted Housing Tribunal (which could comprise of relevant officials, councilors, and community leaders with the assistance of legal professionals if and when required) through the use of adjudication, mediation or arbitration.
- This tribunal would encourage an occupier to submit evidence that she/he is the legal owner/occupier of a property, which is being purchased or in cases involving family succession, the occupier will have to submit evidence that she/he is the correct recipient of the property.
- In either case, tripartite agreements of cancellation and resale can be negotiated through mediation, failing which transfer must be made to the purchaser of record or her/his estate.
- Such a new sale would bear a current date but could be regarded as qualifying for the EEDBS.
- If disputes are not resolved to the satisfaction of all parties, an aggrieved party may approach the Civil Court.

5.4 RECTIFICATION

- Once the housing stock has been normalised and regularised, a decision will have to be taken on the need to rectify the housing stock to the point where it is safe, habitable and ready for transfer.
- Rectification should be in line with the National Housing Programme for the Rectification of Dwellings, built from the early 1930's up until 1994, including houses in R293 towns and those constructed in former TBVC areas. Some of the houses were transferred without appropriate services while others were transferred "voetstoots" and were in a bad state of repair mainly due to structural defects.

5.5 AUDIT AND REPORT ON HOUSING STOCK

Municipalities and PDs are required to quantify and report on their housing stock, and to include, *inter alia*, the following:

- The number of dwellings requiring repairs.
- Indicate what will be classified as repair requirements.
- The ownership status of the houses.
- Categories of houses, for example, row houses or flats, etc.
- Services required, etc.

NB: This process must be in line with the requirements set out in the Rectification Programme referred to in 5.4 above.

5.6 BENEFICIARY APPLICATION PROCEDURES

- Applications must be made on a comprehensive form that is used to cover all categories of applicants. Each categories legend should show the special considerations relating thereto.
- Potential beneficiaries would need to apply to the relevant authority, using the application form referred to above, should they want to participate in the EEDBS and take transfer of their housing units.
- Further forms should be provided for an Agreement of Sale to a tenant and for an “Acknowledgement of Debt” in cases where the historic cost or, balance of purchase price exceeds the subsidy or, where the transferee is not entitled to a subsidy.

5.7 ROLES AND RESPONSIBILITIES OF GOVERNMENT

5.7.1 THE NATIONAL DEPARTMENT

The National Department is responsible for:

- The monitoring and evaluating of the EEDBS transfer process and the analysis of whether or not it is actually efficient and effective.
- The upkeep of the National Housing Subsidy Data Base and National Debtors System so that the movement within the EEDBS process of all housing stock, is recorded and updated; and

- Policy and programme amendments, which will support and facilitate the EEDBS and its associated processes and procedures.

5.7.2 PROVINCIAL DEPARTMENTS

PDs are responsible for:

- Beneficiary identification, to establish the identity and entitlement of a person claiming the EEDBS.
- Dispute resolution where disputes pertaining to the identity and entitlement of the beneficiary occur.
- Sales administration, including drafting and completion of sales agreements.
- Writing off of housing debt, in terms of Section 76(e) of the Public Finance Management Act, 1999 (Act 1 of 1999).
- The setting of the cut-off date for the lodgement of claims for the granting of the EEDBS, by the MEC, in consultation with the Minister.
- For the normalisation and upgrading of properties that it owns, before any form of transfer can be enacted.
- The obtaining of proper authorisation under the financial regulations applicable to them for any contemplated transactions.
- Whenever possible and in instances where provincial and municipal housing stock is in close proximity to each other, the relevant authorities should consult each other on disposal strategies to ensure parity and equity.

5.7.3 MUNICIPALITIES

Municipalities are responsible for:

- Beneficiary identification, to establish the identity and entitlement of a person claiming the EEDBS;
- Dispute resolution, where disputes pertaining to the identity and entitlement of the beneficiary occur;
- Sales administration, including drafting and completion of sales agreements in term of their bylaws; and

- Forwarding the EEDBS transactions to the PDs to be captured on the relevant National Housing Database.

5.8 COMMUNICATION

- A communication strategy must be developed for the EEDBS by all levels of government through their capacity building programmes. The communication strategy must be targeted and directed at:
 - Beneficiaries and stakeholders identified through the regularisation and normalisation process and the surrounding communities.
 - Municipalities concerned and affected by the EEDBS, their council and ward structures.
 - Affected communities and their non-governmental structures.
 - The public at large.
- The communication strategy must include and openly communicate (in the appropriate language):
 - The full range of alternatives open to the beneficiaries with the pros and cons of all tenure options explained to them.
 - The associated costs, which must be fully identified and explained.
 - Resident education and information sharing sessions.
 - Available literature or other material that can be accessed by the households/individuals.
- The tenants must also have a forum in which to express their needs, desires and issues with the process and should have the final say on the appropriate tenure option. An option not to transfer to full individual ownership should also be considered and validated.
- The communication strategy must outline the regularisation, normalisation, rectification (where necessary) and transfer processes, to ensure active participation and buy-in by all concerned throughout the process.
- It must be borne in mind that the communication strategy does not end after a decision has been taken and EEDBS processes have been completed, but there should be a follow up to the process in the form of client satisfaction surveys and open communication.