



**MINISTRY FOR HUMAN SETTLEMENTS
REPUBLIC OF SOUTH AFRICA**

NATIONAL ASSEMBLY

QUESTION FOR ORAL REPLY ON 19 AUGUST 2015

QUESTION NO.: 330

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Ms M O Mokause (EFF) to ask the Minister of Human Settlements:

- (1) Does the provision in the National Housing Act, Act 107 of 1997, which prohibits the sale of RDP houses within the first eight years of acquisition not limit the freedom of the recipients of RDP houses to trade freely in the housing market, thereby limiting their constitutional right of freedom to trade;
- (2) what risk implications does this have for the persons who have already bought RDP houses without going through the process of registering the houses at the Deeds Office? NO3406E

REPLY:

- (1) No. The Government is at liberty to impose a sale restriction clause in respect of the residential properties that are financed through the National Housing Programmes. The Constitutionality of the sale restriction clause was considered by the Portfolio and the Select Committees of this democratic Parliament, when the Housing Amendment Act, 2001 (Act No 4 of 2001) inserted the relevant clause in the Housing Act, 1997 (Act No. 107 of 1997) and subsequently through a legal opinion that was requested from the State Law Advisor in 2007 on the Constitutionality of the clause.

It is important to reflect and remind the Honourable member that the matter was thoroughly thought through and the clause was inserted to ensure that government's constitutional responsibility could be effected. The clause was inserted to prevent the indiscriminate sale of the

Government's subsidy financed houses, thereby protecting the State's investment against speculative practices and also protecting the housing subsidy beneficiaries against unscrupulous opportunists that targeted the properties of our beneficiaries for profit making purposes, often leaving the beneficiaries in the same situation in which the State intervened. The house provided is intended to be an asset and government has a right to ensure that the intent of the Constitution is upheld.

- (2) Persons who have illegally purchased Government housing subsidy financed properties that are affected by the sale restriction clause are at risk of losing the properties as the Provincial Government, in whose area of jurisdiction such a properties is located, has the right to transfer the property back into the ownership of the Provincial Government. Where such illegal sale transactions are detected Provinces are obliged to immediately request the State Attorney to institute procedures to transfer the property back to the Provincial Government. The fact that the property might still be registered in the ownership of the original housing subsidy beneficiary's name will not affect the rights of the Provincial Government in any way.

It is also important to note that in cases where the illegal sale transactions of the housing subsidy properties has been subjected to the formal transfer of ownership process and the "buyer" is now the "registered owner" of the property in the records of the Deeds Office, the Provincial Government still has the right and obligation to transfer the property back into the ownership of the Provincial Government as the illegal sale transaction can never nullify the provisions of the Housing Act, 1997.