

**REPORT AND OPINION ON ILLEGAL OCCUPATION OF
HOUSING PROPERTIES IN THE PROVINCE**

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LIMPOPO

PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

**DEPARTMENT OF
LOCAL GOVERNMENT AND HOUSING**

REPORT AND OPINION ON ILLEGAL OCCUPATION OF HOUSING PROPERTIES IN THE PROVINCE.

“Change is not made without inconvenience, even from worse to better”- Richard Hooker.

1. Introduction

In terms of section 26 of the constitution of the Republic of South Africa, 1996, everyone has the right to have access to adequate housing, and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right. In realizing this right government confronts serious socio-economic challenges that manifest themselves in the illegal occupation and selling of housing properties. It is the intention of this report to elucidate on matters related to the acquisition of government subsidies, eligibility, restrictions thereof and measures that can be taken against offenders.

2. Purpose

To offer an opinion with regard to the handling of issues surrounding the illegal occupation of RDP houses in the Province with specific reference to cases as enshrined in the list below.

3. Background

Numerous complaints have been received from members of different Communities regarding rampant illegal occupation of RDP houses across the Province. The list below is just a tip of an iceberg. The problems are widespread across the province. The list below epitomizes problematic areas referred for the

departmental intervention. Several attempts have been made to address the problems as is even evident in the information enclosed in individual files. These problems range from illegal occupation of houses by people who are not real beneficiaries of these houses to selling of houses or renting by rightful owners. Investigations have been conducted to verify rightful occupancy of these properties but due to the recurrent nature of the problem, a lasting solution to the matter has always been elusive. The under-listed are some of the problem areas referred to the department:

1. File AD003/02/2008-Sale of RDP house in Westernberg.
2. AD004/02/2008-Sale of RDP house in Lithuli Park.
3. AD005/02/2008-Illegal occupation of RDP house in Seshego.
4. AD006/02/2008- Illegal selling of RDP house at Tshikota Township in Makhado.
5. AD008/02/2008-Illegal occupation of RDP at Luthuli Park in Sehego.
6. AD007/02/2008- Illegal selling and occupation of RDP houses at Mahonise Village in Thulamela.
7. AD009/02/2008-Illegal occupation of RDP houses at Lithuli Park in Seshego.
8. AD001/02/8-Illegal occupation of State-owner house in Makhado.
9. AD002/07/2007-Irregular allocation of RDP house in Seshego.
10. AD002/02/2008-Sale of an RDP house at Tshikota Township.

4. Remedial Action by the Department to Correct the Anomaly.

From time to time, the department instituted investigations, through the Anti-Fraud and Corruption unit with the aim of rectifying the anomalies. The investigations succeeded in solving a fraction of the problem in the short-term. But the perpetuity of the problem required the department to adopt a long-term approach in solving this conundrum.

A Task Team was appointed during 2004 to look into matters pertaining to Housing. The Task Team found amongst other things, that most of the Housing Units are occupied by people that are not necessarily beneficiaries and they recommended that:

- The Department should embark on a head count exercise on houses and verification on national database.
- verification of legitimacy of beneficiaries ensuring they get properly allocated completed houses and
- Carefully prepared raids are embarked on for purposes of verifying actual occupants of those houses involving SAPS and SANDF.

It is against this back-drop that the department commissioned the services of Servcon to physically verify the current occupants of some of the designated properties. The exercise is aimed at ensuring whether the occupants are indicated under the category of beneficiaries who were provided with low-cost and /or RDP type houses, as occupants in the available department database and/ or determined in areas where the provided Database is applied but such property not appearing on the departmental database.

Since the nature of the problems regarding the afore-said properties is inherently inclusive, it is also important that an identical approach be adopted in trying to address the problem. The department solicited the services of Servcon to normalize or regularize 4180 designated properties to qualified beneficiaries following the rehabilitation program of the department. The designated areas in this instance are

- i. Westernberg in Polokwane: 1052 units
- ii. Thongoaneng: 672 units
- iii. Musina/ Nancefield: 2156 units
- iv. Roosenekal: 300 units.

The above constitute a pilot program for the financial years 2007/2008. The service level agreement signed between the service provider and the department also provides verification for other priority areas in 2008/9. Some of the cases in the ten referred to the department falls squarely within the scope of project normalization. As this report is being written the department is receiving other related complaints.

One of the obligations of Servcon is to, amongst others, develop, and if approved by the department, implement a mechanism wherein qualifying beneficiaries of the designated portfolio would be taken through a rehabilitation process to confirm an applicable status of and either, continued occupancy, confirmed occupancy, rectified and qualified properties, relocation of unqualified occupants etc.

Further, Servcon will moreover, submit recommendations on stipulated options for future use of each properties stock not categorized under the regularization program, Servcon hasn't as yet completed their report which is due before the end of March 2008. It is this report that will expectedly encompass options for future use on other properties outside normalization program.

Clause 6.1.2 of the Service level agreement provides that, "satisfactory performance by Servcon will enhance chances of continuity of the program, as Servcon will be strictly measured on the delivery of trends captured in clause 1.2. of the service level agreement.

It is against this background that recommendations on stipulated options for future use be awaited from Servcon. If the department is completely satisfied with what has been recommended, then the options can be utilized on further prioritized areas. Continued normalization or regularization of properties by Servcon can be recommended based on the overall performance. It is in this

context therefore, that the ten above –mentioned illegal occupation cases can be comprehensively dealt with.

5. Housing Policy Contextual Framework

Section 26 of the Constitution of the Republic of SA, 1996 state that everyone has the right to have “access to adequate housing”. It is the government’s duty to take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.

Since the democratic election in April 1994, government has adopted two developmental programs. The Reconstruction and Development Program (RDP) and the Growth, Employment and Redistribution. The RDP sets out a clear vision for housing, based on the Following four Programs.

- Meeting basic needs
- Developing Human Resources
- Building the Economy
- Demarcating the state and society

Our Housing Policy finds its roots in the National Housing Forum, a multi party non-governmental negotiating forum, comprising members from government, business and community and development organizations.

The Housing Code represents the Culmination of Government’s thinking and Practice as it relates to housing in South Africa.

The Housing Code is the home for all national Hosing Policy, Current and Future. Housing is an area of Con current competence for nation and Provincial government. This means that Provincial government can legislate in respect of the Housing matters that fall within its Provincial Boundaries as long as such legislation does not undermine national legislation.

The primary role of the Provincial government is to promote and facilitate the provision of adequate housing in its province, within the framework of the national Housing policy.

The provincial government therefore provides adequate housing in accordance to the national housing programs as enshrined in the housing code. And they are namely:

1. The housing subsidy scheme
2. The Discount Benefit Scheme
3. The Public Sector Hostels Redevelopment Program

There are six subsidy mechanisms that together comprise the housing subsidy Scheme.

- Project linked subsidy Scheme
- Individual subsidy Scheme
- Consolidation subsidy scheme
- Institutional scheme
- Relocation assistance and rural subsidy

Application for subsidies are therefore made in accordance to the above mentioned scheme and be submitted to Provincial Housing Development Board. When individuals' subsidies are linked to credit, application can be submitted to accredited financial institutions. The Projects-linked, Consolidation, Institutional and Rural subsidies can also be accessed via the People's Housing Process.

Housing Subsidies are paid out of the nine Provincial Housing Development Funds after approval by Provincial Housing Development Boards or accredited municipalities.

6. Eligibility Criteria

A person Qualifies for a Housing Subsidy if they fulfill the following eligibility criteria.

- He or she is married or cohabits with any other person or is single and has proven financial dependents.
- He or she is lawfully resident in South Africa
- He or she is legally competent to contract ; he or she is over 21 years of age if not married
- The gross monthly household income of his or her household does not exceed R3500 per month.
- The beneficiary of spouse has not received a subsidy from the government to buy a house previously.
- He or she is first time property owner.

7. Restriction on State-subsidized housing.

Section 13.1 of the Limpopo Housing Act, 2006 provides that no person granted a housing subsidy in terms of national or provincial housing program for the construction or purchase of a dwelling or serviced site, **may sell, let, pledge or otherwise encumber such person's dwelling or site for a period of eight years** from the date on which the property was acquired by that person.

It went further to warn that a person who contravenes sub-section (1) is guilty of an offence.

Sub-section (4) provides that when a person surrenders the property, the Department is deemed to be the owner of the property. The Department must

make an application to the Registrar of Deeds for the title deeds of the property to be endorsed to reflect the Department's ownership of the property.

In terms of Sub-section (5) of the Act, no purchase price or other form of compensation is to be paid to the person surrendering the property.

8. Restriction on sale of state-subsidized housing.

Section 14.1. of the Limpopo Housing Act, 2006 provides that "it must be a condition of every housing subsidy granted to a person in terms of any national or provincial housing program for construction or purchase of a dwelling or serviced site, that such person's successors in title or creditors in law, **must not sell or otherwise alienate his or her dwelling or site unless the dwelling or site has been offered to the Department.**"

The offer to the Department must be made in writing and must be accepted or rejected by the MEC within a period of 60 days from receipt thereof, as espoused in sub-section 2 of the act.

9. Recommendations.

This report recommends that Servcon Housing Solutions, a private company established in June 1995 in terms of (ROU) Record of Understanding between government and Association of Mortgage lenders, after the completion of their pilot project on the four (4) areas listed in the background

And when Servcon has provided a full report to the Department (and to the Department's satisfaction) be granted an opportunity to extend their normalization programme to other areas prioritized by the Department.

That Servcon submit recommendations on stipulated options for future use of each properties stock not categorized under the Regularization Program. It is in this context that other problematic areas reported in this report shall be comprehensively covered.

Municipalities should start to assert themselves in so far as Housing matters in their local areas are concerned. Some of the problems could have been solved a long way back had municipalities been as equal to the task as it relates to housing matters. Monitoring and evaluation of completed projects is absent hence the illegal occupation and selling of this Houses. After handing over, municipalities should take charge of beneficiary validation exercises in their ongoing Monitoring mandates.

10. Concluding observations.

The illegal occupation and selling of RDP houses is fast becoming one of the most rampant crimes afflicting our province in recent times. It is worth noting that a person who contravenes the provisions of the Limpopo Housing Act and sell, let, or illegally occupy a dwelling or site is guilty of an offence and can be charged as such. The completion of the Housing normalization pilot project and their recommendations is awaited with abated breath. We anticipate that such recommendations might go a long way in also solving other problems permeating the department on a daily basis.