

# The Transfer of Low-Cost Housing in South Africa: Problems and Impediments

Gert Van Schalkwyk, Chris Cloete

**Abstract**—South Africa is experiencing a massive housing backlog in urban low-cost housing. A backlog in the transfer of low-cost housing units is exacerbated by various impediments and delays that exist in the current legal framework. Structured interviews were conducted with 45 practicing conveyancers and 15 deeds office examiners at the Deeds Office in Pretoria, South Africa. One of the largest, the Deeds Office in Pretoria implements a uniform registration process and can be regarded as representative of other deeds offices in South Africa. It was established that a low percentage of low-cost properties are freely transferable. The main economic impediments are the absence of financing and the affordability or payment of rates and taxes to local government. Encroachment of buildings on neighbouring stands caused by enlargement of existing small units on small stands also cause long-term unresolved legal disputes. In addition, as transfer of properties is dependent on the proper functioning of administrative functions of various government departments, the adverse service delivery of government departments hampers transfer. Addressing the identified problems will contribute to a more sustainable process for the transfer of low-cost housing units in South Africa.

**Keywords**—Conveyancing, low-cost housing, South Africa, tenure, transfer, titling.

## I. INTRODUCTION

THE South African housing industry accounts for a considerable portion of the nation's economic activity through its backward linkage to land market, building material, industry, labour markets and forward linkage to financial markets [1]. According to the Housing Delivery Statistics of the Department of Human Settlement, 3,584,689 serviced sites, houses or units had been delivered from 1994 up to 31 March 2013. However, in Gauteng Province, where this study was conducted, 45.1% of urban households still lived in informal settlements in 2016 [2].

Security of tenure plays an important role in the stability of societies. Although the economic effects of formal title deeds may differ in different countries [3]-[16], it is generally accepted that titling can contribute to bridging the gap between rich and/or in developing countries (see e.g., [17]-[23]).

Housing tenure in South Africa can generally be described as freehold [24, p.419]. The freehold is documented in a physical title deed document. This document is proof of registration against the land register. It refers to a properly surveyed area for which a corresponding area map is created by the Surveyor General's office and names the title holder and the title holder's legal status. The formal process of passing tenancy, by title to immovable property is referred to as *transfer*, in the South

African context. Transfer or titling can only be affected by a practicing attorney also admitted as a conveyancer in terms of the *Attorneys Act 47 of 1973*. This conveyancing process is prescribed by law. Compliance with the formal process is mandatory for a formal deed of ownership or Title, called a title deed, to be furnished to a new homeowner after successful registration in the Deeds Registry.

The main aim of this study was to identify the impediments and delays that exist in the transfer of low-cost housing within the current legal framework in South Africa. The term *low-cost housing*, as used in this study, refers to government-initiated housing, usually comprising of a single or small unit on a serviced stand and with a value below R150 000 (~10 000 USD).

This study was limited to instances where a willing buyer and seller entered into a contract for transfer of a property and approached a conveyancer to transfer such a property in the period between 2012 and 2015. Situations when the transfer of the property was significantly delayed beyond a period of 8 weeks, or a period of transfer the conveyancer would normally expect, from the date of receiving the instruction were investigated.

The following anticipated problems in transferability were investigated:

- What are the economic causes of poor transferability and delayed transfer?
- What are the technical or legal causes of poor transferability and delayed transfer?
- What are the legal disputes that can cause poor transferability and delayed transfer?
- What are other causes of poor transferability and delayed transfer?

## II. METHODOLOGY

Qualitative data analysis was done by critically exploring and evaluating the data to provide an overview of the findings within the context given by the literary survey. The data are interpreted and subproblems are identified in the transfer of low-cost housed or delay in the transfer process. The identified subproblems are listed and explored under the results.

As the transfer process is implemented via institutional systems with numerous interdependent role-players, quantitative research is difficult. Therefore, a qualitative research method was adopted, in order to ascertain reasons for poor transfer or non-transferability. This was followed by

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interviews with relevant role players.

Interviews were conducted with a non-randomised sample of available conveyancers and deeds office examiners at the Deeds Office in Pretoria, South Africa. The Deeds Office in Pretoria is considered to be representative of other deeds offices in South Africa as it is one of the largest, with a uniform registration process. A questionnaire template was used to collect data during the interviews. The collection of data was done by initial interview in person, telephonically or through Skype interviews with the recipients of the questionnaire.

Two groups of respondents were furnished with the questionnaires and interviews were conducted with those respondents. The first group of respondents were practicing conveyancers. A total of 35 interviews were conducted in this group. Respondents were not required to provide personal identifying information during the interviews. The sample was drawn from the group of conveyancers who signed the execution register on the chosen two days of interviews. Two consecutive days were selected - not at month-end and not on a Monday or Friday, where the execution load tends to be higher and less time would have been available for the interviews within working hours. The choice of interview days would not bias the results as questions pertain to long-term views of conveyancers. The average number of conveyancers who signed the register during the two days of interviews was 87.

The second group of respondents were deeds office examiners. 15 interviews were conducted with deeds office examiners in their personal capacity. Respondents were not required to provide personal identifying information during the interviews. The sample was drawn from a group of 101 senior and junior examiners from one Deeds Office in Pretoria and respondents were selected non-randomly on availability to participate in an interview.

### III.FINDINGS

#### *Problems Experienced by Conveyancers*

Of the 35 conveyancers interviewed, 19 indicated that they do not handle low-cost housing while 16 indicated that they did transfers of low-cost housing. The average years of experience of acting as conveyancers was 22.5 years and 12.8 years, respectively (Table I).

TABLE I  
 CONVEYANCERS DEALING/NOT DEALING WITH LOW-COST HOUSING AND THEIR RESPECTIVE YEARS OF EXPERIENCE

	Dealing with low-cost housing	Not dealing with low-cost housing	Total
Number of conveyancers	16	19	35
Proportion (%)	45.7	54.3	
Total years of experience	205	429	634
Average years of experience	12.8	22.5	18.1

The main reasons advanced for not dealing with low-cost housing transfers were:

- Six respondents gave no reason why they did not undertake low-cost housing.
- Two indicated that it was uneconomical work.
- Two respondents indicated that low-cost housing is not

included in their client base.

- Another two respondents indicated that they are not on a housing board panel to get the instructions.
- Seven respondents indicated that they do not receive low-cost housing instructions.

Of the 19 respondents who do not low-cost housing transfers, three respondents mentioned having previously done transfer of low-cost housing but stopped doing it as a result of problems they experienced, including obtaining clearance certificates, “red tape” and too many variables.

The responses to the two main questions, “1.5 Is low-cost housing more transferable, the same or less transferable than standard non low-cost housing?” and “1.7 Is the time period taken to transfer low-cost housing shorter, the same or longer than non low-cost transfers?” were similar in that the transferability and time taken went hand in hand. The respondents indicated the same reasons in the follow up questions to both questions, in most instances leading to the logical decision to evaluate the responses together.

Of the 16 respondents, none indicated that the transferability was better or faster. Two respondents (12.5%) indicated that the transferability was the same. Furthermore 12.5% of the respondents (2/16) indicated the transferability as the same on condition that they were first transfers from housing boards with institutional backing. The second condition was having a dedicated project and office in the township for the duration of the project.

The proportion of respondents dealing with low-cost housing who found the properties less transferable and that the transaction took longer, were 75% (12/16). The reasons advanced for poor transferability and longer time period were as follows:

- Of these, nine (75%) indicated one of various problems associated with clearance certificates.
- Five respondents indicated problems associated with parties to the contract, examples being, contactability, the keeping of appointments and lack of insight in the transfer process (5 respondents).
- Five respondents indicated administrative process difficulties, mostly pertaining to identity documents not being issued, mistakes on the identity documents and uncertainty of ownership.
- Of the respondents, 33.3% (4 of 12) indicated previous or current estates not finalised being an impediment.
- Of the respondents, 25% indicated financial reasons with affordability of transfer cost as an important factor (3 respondents).

It is noteworthy that multiple reasons for poor transferability and longer time periods are advanced. The implication is that a single transaction may have numerous causes impeding the registration.

Conveyancers generally viewed low-cost housing negatively as uneconomical and mired in administrative chaos. Some describe this work as a struggle and nearly impossible to do in some instances.

The non-conformity to the various aspects of legislation applicable to numerous township establishment schemes is a

key stumbling block. The upgrading of tenure from leasehold to full title is viewed as difficult, cumbersome coupled with uncertainty about applicable legislation and forms to use. Central to all attempted transfers are problems associated with the clearance certificates.

Only four respondents dealing with low-cost housing viewed this work in a positive light.

- One respondent reported doing only first transfers from housing boards with institutional backing to the first homeowners. Subsequent transfers were viewed as uneconomical.
- One respondent did first time-transfers from housing boards and subsequent transfers by establishing an on-site satellite office for the period of the project.
- Two respondents did not give reasons. (One had little experience having only practiced for one year).

One respondent, who viewed the work as cumbersome, does substantial work in this market. The respondent will undertake to finalise outstanding estates impeding the transfer process. The respondent enters into an attorney and client increased fee agreement before undertaking the work.

#### *Problems Experienced by Deeds Office Examiners*

A total of 15 deeds office examiners were interviewed. Four respondents (average experience 12.7 years) indicated that they do not examine low-cost transfers while 11 respondents (average experience 11.8 years) did examine low-cost housing transfers (see Table II).

TABLE II  
 DEEDS OFFICE EXAMINERS EXAMINING/NOT EXAMINING LOW-COST HOUSING AND THEIR RESPECTIVE YEARS OF EXPERIENCE

	Examining low-cost housing	Not examining low-cost housing	Total
Number of examiners	11	4	15
Proportion (%)	73.3	26.6	
Total years of experience	123	51	174
Average years of experience	11.8	12.7	11.6

The main reason advanced for not examining low-cost housing was the administrative non-allocation of such transactions to them.

The main problem identified was that of conveyancers attempting transfers using non-applicable legislation or document formats. A substantial number of correction transfers were handled, where mistakes made in the case of local government or housing institution being the transferors of first instance were rectified. Transfer documents lodged with lapsed clearance causing rejections were also common.

The responses to the two main questions, “1.5 Is low-cost housing more transferable, the same or less transferable than standard non low-cost housing?” and “1.7\_Is the time period taken to transfer low-cost housing shorter, the same or longer than non low-cost transfers?” were similar in that the period of time taken followed the transferability. The respondents indicated the same reasons for both questions, in most instances indicating the same answers applied to both the questions. This was the same as the responses of the conveyancers. The logical response was to evaluate the responses together.

Only one of the 11 respondents indicated that the transferability was better and transfer process faster, reasoning that the documents were less complex; however, the period of service of this deeds office examiner was only 2 years. Three respondents (27.4%) indicated that the transferability was the same.

Seven respondents indicated that transferability was less and took longer. The reasons advanced for less transferability and longer time period were as follows:

- Five of the respondents indicated drafting documents by conveyancers using wrong forms or non-applicable legislation.
- Four respondents attributed it to rates clearance certificate issues, with lapsed certificates as the main cause of rejections.
- Four respondents mentioned rectification of documents caused by inaccurate first transfers from housing board or mistakes on identity document particulars.

Various causes of poor transferability were found. The interdependency of various role-players, institutions and complexity of the process make the compiling of an all-inclusive list of causes for non-transferability and delays in transfer difficult. Analysis of the questionnaire data indicated the causes to be predominantly economic, technical and legal. The list of causes is however not exhaustive.

Economic causes of poor transferability and delayed transfer included:

- Financing by financial institutions is not available.
- The purchaser cannot afford the transfer or bond cost.
- The legal litigation cost to settle a legal or other dispute is unaffordable or prohibitive in comparison to the value of the property.
- Conveyancers, having exclusive reserved rights to effect transfers of low-cost housing, view this work as uneconomical.
- The outstanding rates and taxes payable for a clearance certificate are so high that the seller does not have the cash flow capabilities to settle this amount before transfer. Organisations advancing the clearance certificate cost as short-term loans are risk adverse to do such advances on low-cost housing.
- The outstanding rates and taxes have reached an amount so high or in excess of the market value of the property making a formal transfer uneconomical for the parties.

Technical or legal causes of poor transferability and delayed transfer were found to include:

- The seller only has assumed legal title to the property. The property is not registered in the seller’s name. Mostly the seller assumes to have ownership by having a sworn affidavit from a previous owner or occupier.
- Building encroachments either from the seller’s property on to neighbouring properties or the inverse need to be settled. Small stands, uncertain building lines and informal structures exacerbate these problems.
- Title conditions that prohibited transfer for specific periods of time were stipulated in some cases.

- Sequential transactions were not finalised (outstanding previous transfers). The main cause is a previous estate or multiple estates not finalised.
- Legal status of the parties is reflected incorrectly as required by the deeds office.
- Incorrect identity documents were provided for one or more parties to the transaction.

Legal disputes causing poor transferability and delayed transfer found:

- The seller not being able to give possession to the intended purchaser because of illegal tenants, squatters or family members occupying the property.
- Disputed ownership of the property. This is normally preceded by one or more extra-legal “transfers” of ownership. The prevalence is high with properties containing title conditions prohibiting transfer for a number of years.

Diverse causes of poor transferability and delayed transfer:

- On occasion, multiple purchasers were found to have paid the purchase price for the same property, either partially or fully. These payments are usually done between the contracting parties without use of an intermediary attorney’s trust account. In most instances the payments are acknowledged in writing, mostly by an affidavit signed before a member of the South African Police Service.
- The evaluation of the property affecting the clearance amount payable is incorrectly reflected by the local authority which has to issue the clearance certificate and the authority does not have the institutional will or capability to rectify the problem.
- The process in order to adjudicate a payment or other dispute between the seller or the seller’s attorney and the local authority issuing a clearance certificate is lengthy, inefficient and inconsistent.
- Clearance certificates were not issued by local authorities.
- The issue of clearance figures after such extended periods of time – it could take up to a year - that the parties have proceeded with extra-legal “transfers”, cancelled the instruction to transfer or other arrangements were made.

The indication is that where two consecutive preceding estates are involved, transfers are seldom affected. Transactions with delays of more than a 24-month period irrespective of the cause thereof were found to be “transferred” by informal means by the parties. An important deduction made is that an unknown and growing number of properties each year become non-transferable, indicative of an escalating problem.

#### IV. CONCLUSIONS AND FUTURE RESEARCH

It was confirmed that fundamental problems exist in the ease and speed of the transfer of low-cost housing in South Africa. A number of causes of the poor transferability and delays in the transfer process were identified.

Comprehensive future research should be undertaken to ascertain the current extent of the problem of poor transferability and delayed transfer, as well as the trend of escalation of the situation. Implementation of corrective actions, including legislation changes to alleviate the problem,

should be explored. The principal purpose is not to mend the transferability process but to empower the poor.

The advantages of titling, with specific focus on the South African situation, should be fully explored in order to guide the implementation of policies which would have the maximum achievable impact.

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