

RESEARCH INTO HOUSING SUPPLY AND FUNCTIONING MARKETS

**Banking Association of South Africa:
Housing Workstream Group**

Resource Report 7: Secondary Markets



December 2005

Prepared for:
Banking Association of South Africa
3rd Floor, Sunnyside Ridge
32 Princess of Wales Terrace
Parktown
2193
Tel: 011 645 6705

Submitted by:

The Settlement Dynamics Project Shop
31 Ashford Park
Parkwood
Tel 011 880 162
Fax 011 880 16283
Email: mike@sdymanics.co.za

Matthew Nell & Associates
4th Floor, JHI House
Cnr. Cradock Ave. & Baker Str.,
Rosebank
PO Box 31713, Braamfontein, 2017
Tel. 011 447 6388; Fax. 011 447 8504

Research into Housing Supply & Functioning Markets: Component 2 Scoping Housing Supply

Email. barmat@barmat.co.za

**This research has been undertaken by
Matthew Nell & Associates in partnership with
The Settlement Dynamics Project Shop**

Author of this Report:

Kecia Rust

Team Leaders

Matthew Nell and Mike Morkel

Project Coordinator

Ros Gordon

Project Members

Otto Holicki (Technical research)

Kecia Rust (Financial research)

Andreas Bertoldi (Supply market research)

Mike Morkel (Supply market research)

Econometrix (Demand market research and Modelling)

AfriGIS (Supply data research)

Progressus (Supply data and social research)

Administration

Kim Foster

Acknowledgements

The assistance of the National Home Builders Registration Council, focus groups, interview and survey respondents, as well as housing sector specialists and Government Officials is acknowledged.

In addition our thanks to the Housing Workstream Group for their support and direction during this assignment.

Contents

1	Introduction.....	1
2	Overview of residential resale market performance.....	4
3	The residential resale process: key issues, impediments and risks.....	12
3.1	Identify property for sale / identify buyer.....	15
3.2	Sign sales agreement.....	23
3.3	Bond application.....	29
3.4	Fulfilling pre-transfer requirements.....	34
3.5	Drawing up transfer documents / deed.....	39
3.6	Lodging at deeds office.....	42
3.7	Taking occupation.....	45
4	Conclusion and Recommendations.....	49
4.1	Delays.....	49
4.2	Avoiders and absorbers.....	52
4.3	Recommendations.....	53
	Annexure 1: Participants to the private and public sector workshops, September 2005....	60
	Annexure 2: Consolidated Risk Analysis of the Residential Resale Market Transaction Process.....	61

List of Figures

Figure 1	ABSA Avg House Prices: South Africa 1999-2005(Q1) (Rands).....	7
Figure 2	Secondary registrations as percent of total proclaimed erven per sub-market 1999-2003 (TRPM study)	9
Figure 3	Property transfer process.....	13
Figure 4	Parties to a residential resale transaction (when an estate agent is available)	18
Figure 5	Parties to a residential resale transaction (when an estate agent is not available)	23

List of Tables

Table 1	ABSA House Price Index August 2005	5
Table 2	House price trends across South Africa, 1999-2005(Q1)	5
Table 3	ABSA Avg House Price Index figures: 'Affordable' market 1999-2005(Q1) (Rands)	6
Table 4	Year-on-year avg. house price percentage increase across South Africa (2005-Q2)	8
Table 5	Comparison of township and non-township property prices (Shisaka, 2004)	9
Table 6	Extent of secondary transactions in the household survey and deeds analysis, 1999-2003 (Shisaka 2004)	10
Table 7	Risk analysis for step 1: Identify property for sale / identify buyer	15
Table 8	Risk analysis for step 2: sign sales agreement	24
Table 9	The cost of building plans in three Servcon communities (Rust, 2003)	28
Table 10	Risk analysis for step 3: bond application	29
Table 11	Risk analysis for step 4: fulfilling pre-transfer requirements	34
Table 12	Risk analysis for step 5: drawing up transfer documents / deed	40
Table 13	Documentation required in the transfer process.....	41
Table 14	Risk analysis for step 6: lodging at deeds office.....	44
Table 15	Risk analysis for step 7: taking occupation	46
Table 16	Average and median duration of transfers (typical and atypical).....	49
Table 17	Average and median duration of typical transfers (i.e. those less than 180 days).....	50
Figure 1	ABSA Avg House Prices: South Africa 1999-2005(Q1) (Rands).....	7
Figure 2	Secondary registrations as percent of total proclaimed erven per sub-market 1999-2003 (TRPM study)	9
Figure 3	Property transfer process.....	13
Figure 4	Parties to a residential resale transaction (when an estate agent is available)	18
Figure 5	Parties to a residential resale transaction (when an estate agent is not available)	23

1 Introduction

The Financial Sector Charter (the Charter) commits the Banks to provide some R42 billion of which the vast majority will be applied to mortgageable loans for housing units, with a maximum value of R180 000 per unit (December 2003), to households in the affordable housing sector (households with a maximum income of R7500) by the 31 December 2008¹.

The Banking Association of South Africa has established the Housing Workstream Group to ensure that Financial Institutions are able to meet this requirement of the Charter. The Housing Workstream Group needs to fully understand the market in which they will be operating, in particular the current dynamics which shape demand and supply in this market segment.

Accordingly the Banking Association of South Africa appointed Matthew Nell and Associates assisted by The Settlement Dynamics Project Shop to undertake research into **Housing Supply and Functioning Markets**.

The purpose of the research is to understand the current dynamics and factors influencing the supply and demand for new and existing housing in the ‘affordable housing market’ (with a mortgageable value of less than R180 000 and targeting people with an income of between R2500 and R7500 per month).

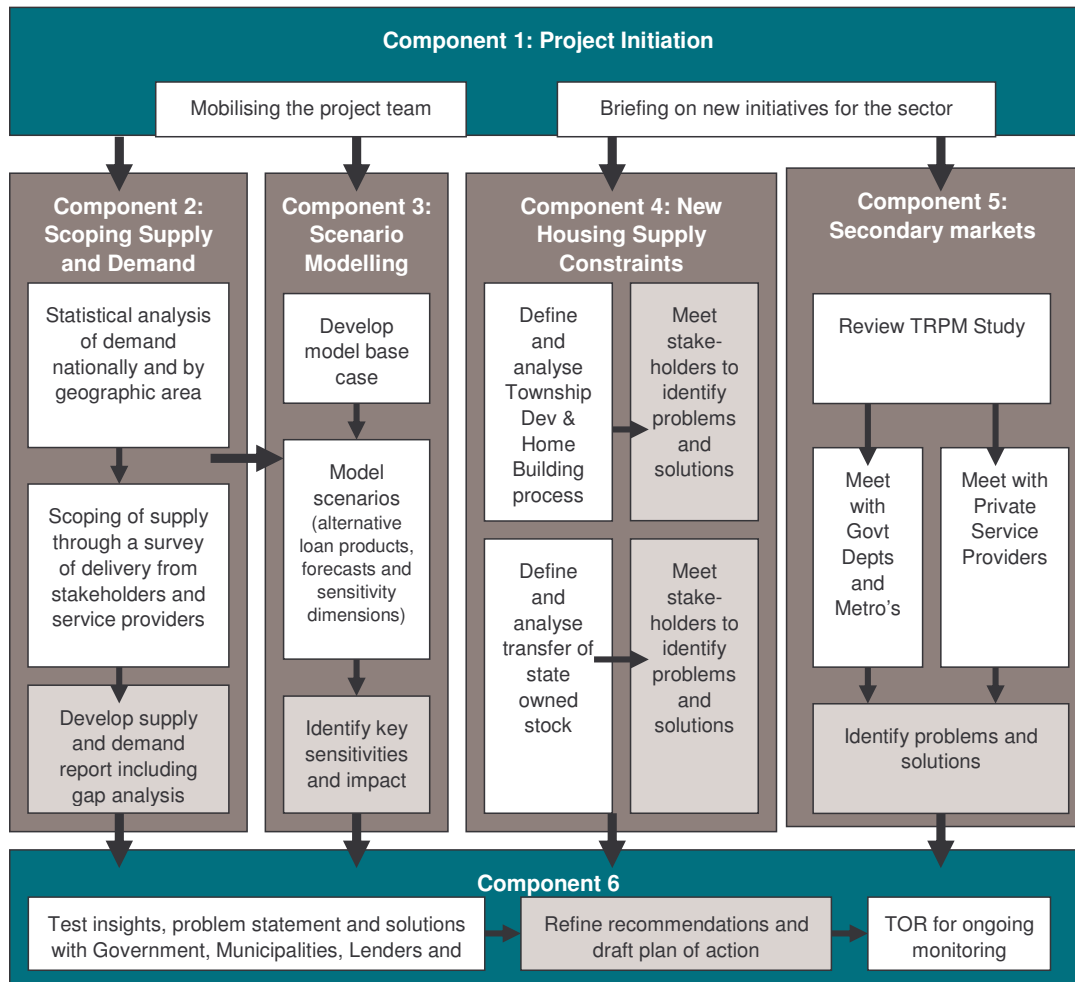
The objectives of the research are to:

- Scope the supply of and demand for affordable housing
- Define market constraints and dysfunctionalities
- Propose a practical plan of action for the Financial Sector in respect of:
- The gap between the demand and supply of affordable housing
- Addressing further demand and/or supply constraints relative to the Financial Charter December 2008 targets

¹ Both of the target figures [ie income and product price] were set at December 2003 and are subject to escalation in line with CPIX

The research is being undertaken in terms of six components detailed in Figure 1 below.

Figure 1: Overall Approach



This report outlines the work undertaken in respect of Component 5: Secondary Markets and comprises an investigation into residential resale market constraints.

The report is based on a literature review as well as comments raised during the course of two workshops held as part of this project.

The literature review focused. It is based on an analysis of previous research undertaken (the study into Township Residential Property Markets, undertaken in 2003/04 by Shisaka Development Management Services), a review of current developments in the resale market as documented in the press, as well as comments raised during the course

of two workshops held as part of this project. The first, with private sector players, took place on the 2nd of September. The second, with public sector players, took place on the 5th of September 2005. The objectives of the workshops were to explore the specific constraints to the residential resale market in the sub-R180 000 bond category, and to, where possible, identify mechanisms for overcoming these.

This report includes four sections:

- **Section 1: This introduction**

- **Section 2: Overview of Residential Resale Market Performance**

This section documents recent performance in respect of the overall residential resale market, and considers specifically performance in respect of lower value properties. It identifies that the property price boom evident at the higher end of the market is not a significant in the sub-R200 000 market.

- **Section 3: The Residential Resale Process: Key Issues, Impediments and Risks**

This section analyses the risks in residential resales through the seven steps that together comprise the resale transaction process.

- **Section 4: Conclusions and Recommendations**

This section concludes the analysis and offers recommendations in respect of the various risks that exist in the seven steps of the resale transaction process.

2 Overview of residential resale market performance

In the past few years, there has been considerable interest in the performance of South Africa's residential property market. The focus has been especially on the residential resale market, which has seen property prices at the upper end double (and in some cases treble) in as few as five years.

“... house prices have more than doubled since June 2000, while consumer inflation has risen by only about 25% over the same period. The nominal growth in house prices last year was 32,2% and ABSA expects this to slow to the 15% to 20% range in 2005.” (Mail & Guardian online 03 February 2005 11:07)²

Fuelled by improved consumer sentiment on the back of 35-year low mortgage interest rates and sustained double digit building cost inflation, the rapid increase in house prices has been described by some as the ‘normalising’ of the South African property market against its international comparators. Certainly, international investor interest in South Africa's property market is indicative of the good value that can still be realised here.

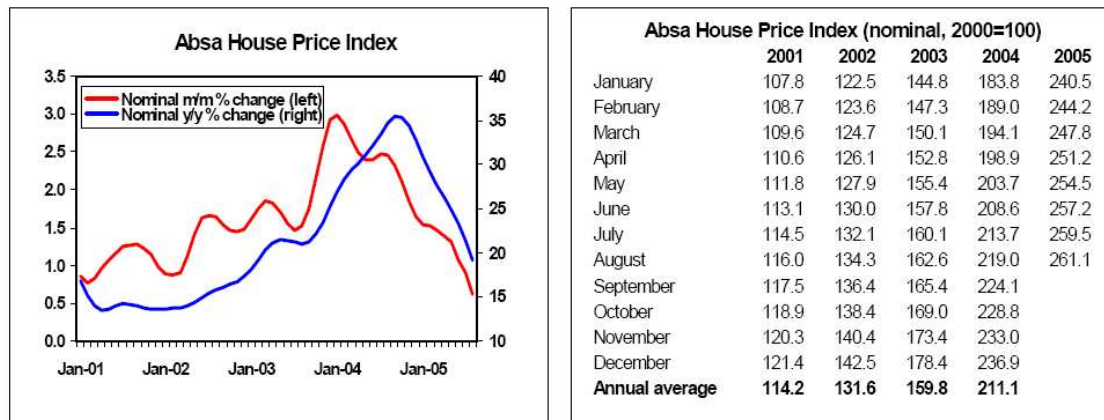
“Over the past five years, the South African residential property market experienced strong price growth of about 20% per annum in nominal terms and 13,6% per annum in real terms. During this period the market was driven by a wide range of factors after many years of mediocre growth from the mid-1980s up to the late 1990s. Property prices have probably been catching up with other asset prices since then.” (ABSA: Property Trends. 11 July 2005)

The ABSA House Price Index shows significant increases in house prices made to the end of 2004, and a slow tapering off of the degree of price growth in 2005.³

² ABSA: January house prices up 29,6%. Mail & Guardian online. Downloaded on 27 May 2005.

³ ABSA (Property Trends: 8 September 2005) House Price Index August 2005

Table 1 ABSA House Price Index August 2005



House price trends across South Africa, recorded by ABSA based on loan applications approved by ABSA Bank for houses between 80m²-400m² and costing less than R2,2 million, between 1999 and the first quarter of 2005 are set out in the following table.

Table 2 House price trends across South Africa, 1999-2005(Q1)

	House price trends (rand, nominal)											
	1999	2000	2001	2002	2003	2004	2004				2005	
							Q4	Q1	Q2	Q3	Q4	Q1
South Africa	232 217	271 938	310 508	357 792	434 513	574 465	472 192	513 932	554 474	595 662	633 762	662 477
Eastern Cape	205 616	230 838	266 175	287 834	360 941	529 501	397 969	445 527	501 977	565 778	602 975	620 482
PE/Uitenhage metro	205 963	243 798	267 563	298 997	364 249	537 446	412 556	465 622	516 132	560 539	607 492	656 742
Rest of region	205 461	222 413	246 022	278 286	351 102	518 816	386 150	424 773	483 164	558 906	598 419	588 232
Free State	175 489	193 364	216 602	236 646	285 937	390 198	312 620	341 193	375 675	410 392	424 934	449 286
Bloemfontein	201 836	219 445	260 012	277 864	338 542	478 939	377 872	412 251	452 198	505 524	546 682	561 345
Rest of region	147 251	160 837	173 169	185 582	216 038	295 231	238 076	259 899	291 824	311 226	321 972	366 034
Gauteng	236 747	281 026	334 199	402 891	479 652	612 631	510 718	548 872	588 400	628 256	674 252	701 868
Greater Johannesburg	238 017	279 811	336 018	405 908	482 699	618 967	517 488	556 925	594 177	636 550	678 813	704 545
Jhb Central & South	237 229	280 313	364 891	379 268	430 213	594 461	482 645	523 421	566 019	615 965	672 538	716 436
Jhb North & West	297 309	351 644	392 703	508 508	631 851	771 806	675 977	715 438	746 693	791 909	834 186	873 358
East Rand	205 388	237 255	274 563	336 680	387 970	503 295	423 485	455 902	478 789	520 846	557 643	580 604
Pretoria	260 777	307 284	357 299	446 337	533 779	663 846	567 379	598 305	638 303	685 024	733 767	779 379
Rest of region	175 690	203 689	242 634	271 145	307 825	419 699	340 177	372 910	404 931	428 661	472 250	504 984
KwaZulu-Natal	219 627	230 805	255 566	289 371	407 636	551 200	459 892	503 783	535 162	563 128	595 064	620 696
Durban metro	237 903	245 808	282 182	327 893	466 423	622 709	516 042	572 177	625 004	636 005	657 650	703 113
Rest of region	198 192	211 219	224 180	248 689	340 759	461 089	393 489	419 682	441 164	466 545	516 966	539 671
Mpumalanga	177 836	193 368	229 599	257 097	304 520	407 643	325 124	352 642	384 851	424 049	469 029	499 657
North West	188 659	214 376	257 328	287 808	334 275	427 532	354 864	378 951	414 593	449 359	467 224	471 393
Northern Cape	170 191	197 920	198 153	224 566	273 783	369 329	307 645	328 165	363 568	381 362	414 222	437 192
Limpopo	185 723	211 792	231 046	263 619	287 774	376 171	302 799	323 386	356 047	395 628	429 625	466 448
Western Cape	292 433	329 080	363 665	404 762	489 641	655 871	524 507	577 223	631 655	686 510	729 128	766 126
Cape Town metro	297 484	333 672	372 707	417 141	497 954	662 805	531 310	581 772	638 822	697 789	733 237	756 361
Rest of region	275 407	311 989	336 310	385 497	466 187	643 859	513 846	565 791	617 737	668 083	723 826	781 478

House prices are based on the total purchase price of houses (including swimming pools, fencing and other improvements) in respect of which loan applications were approved by Absa Bank. As houses of the same size are seldom fully comparable in quality, a strict price comparison is not always possible. Houses of which the prices exceed R2 200 000 have been excluded from the calculations. Prices are smoothed for all houses between 80m² and 400m².

Property prices have risen from a national average of R232 217 in 1999, to R662 477 in the first quarter of 2005. In the first quarter of 2005, property price averages across the

major cities in South Africa were all higher than the Financial Sector Charter maximum value threshold of R180 000.

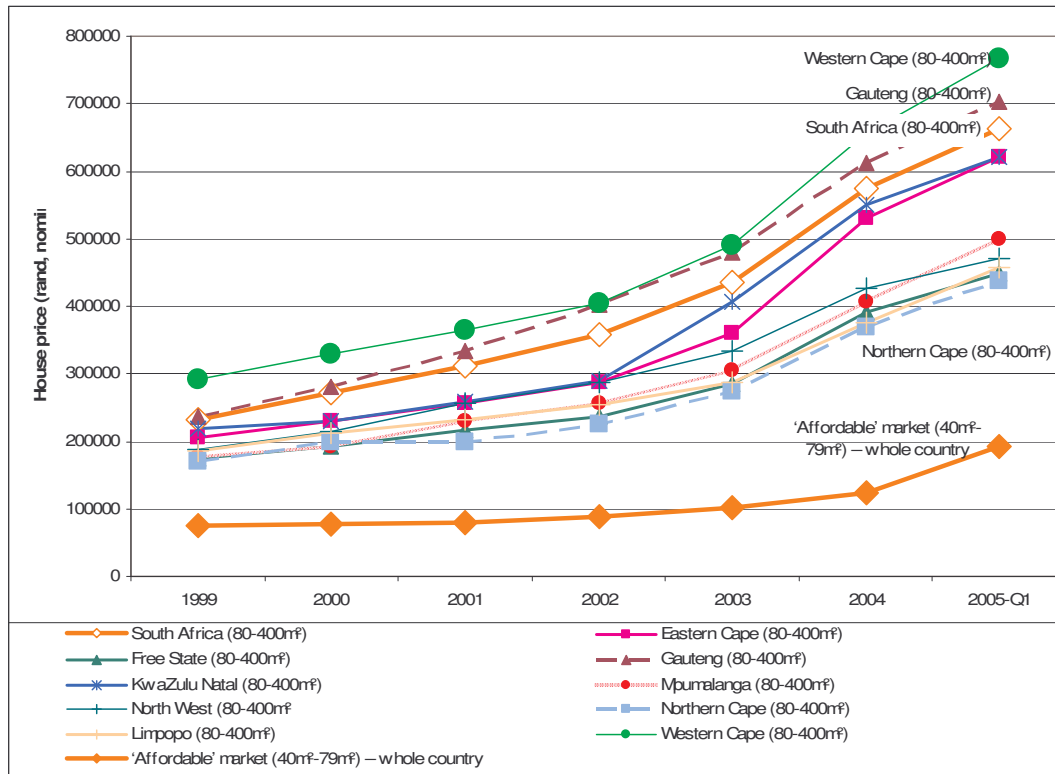
The following table illustrates average house price growth (based on ABSA figures) in the ‘affordable’ market – that is, houses between 40m²-80m². While well within the target in 1999 (at R75 337), the average price in the first quarter of 2005 was already outside of the R180 000 target.

Table 3 ABSA Avg House Price Index figures: ‘Affordable’ market 1999-2005(Q1) (Rands)

	1999	2000	2001	2002	2003	2004	2005-Q1
‘Affordable’ market (40m ² -79m ²) – whole country	75337	77684	79470	89493	102727	122736	193000

In a situation where the average R193 000 is only 90% funded with mortgage credit, an FSC-based mortgage loan would still apply. Still, an average of R193 000 indicates that a considerable proportion of houses in the ‘affordable’ market are currently outside the FSC mortgage limit.

Figure 2 ABSA Avg House Prices: South Africa 1999-2005(Q1) (Rands)



As illustrated above, property price increases in what ABSA has classified as the ‘affordable’ housing market – that is houses between 40m² and 79m² – have been much more gradual, only increasing with any level of significance in the first quarter of 2005. This suggests a widening gap between this market and the 80m² - 400m² market, and an extremely limited affordability for households seeking to improve their housing conditions beyond a 79m² house.

The graph also illustrates the wide provincial variation of house prices, with the most expensive properties being in the Western Cape, Gauteng, KwaZulu Natal and Eastern Cape, and the most affordable being in the Northern Cape, Limpopo, Free State, North West and Mpumalanga.

The split between these two groups is explained further in Table 4, below, which sets out the percent year-on-year increase in price for houses in the ‘small’ category (80-140m²) by province from the second quarter in 2005:

Table 4 Year-on-year avg. house price percentage increase across South Africa (2005-Q2)

South Africa	Eastern Cape	Free State	Gauteng	KwaZulu Natal	Mpum.	North West	Northern Cape	Limpopo	Western Cape
21,1	41,2	26,3	17,9	33,8	24,3	14,1	10,2	44,1	29,5

Limpopo and Eastern Cape have seen the highest percentage growth in house prices in the past year. The lowest percentage growth was experienced in Northern Cape and the North West.

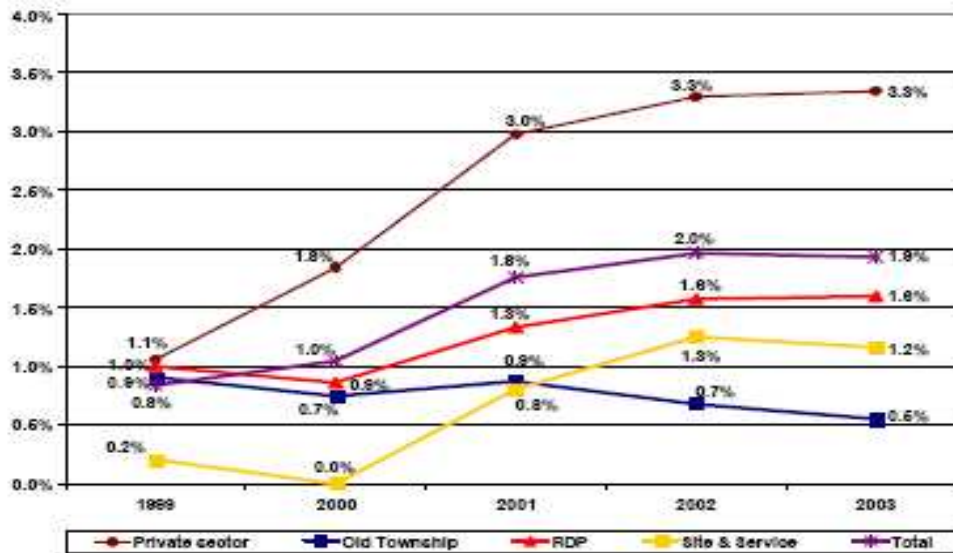
While the press suggest that overall the residential property market is booming, on closer inspection the reality is less encouraging – revealing the isolated and located reality of this appreciation, with varying effect. As suggested above, large segments of the housing ladder remain un-supplied, while increasingly many of the more affluent markets are reaching the limits of household affordability. Critically, the so-called ‘credit gap’ seems to be widening, even in the face of apparently better access to credit, due to the inability to convert financial affordability into effective demand due to the lack of affordable accommodation options to purchase.

The ABSA House Price Index only provides limited information on what it calls the ‘affordable’ market. More data is found in the recent study into township residential property markets (TRPM).⁴

The TRPM study found that irrespective of whether households lived in informal settlements, RDP housing, on site and service plots, or in privately developed stock, levels of resale transactions were a fraction of what they would be outside the township market. Where ‘normal’ market churn is estimated to be about 30% over five years, in the township areas studied, formal (deeds registered) churn averaged only 7,5% across sub-market type, and was only about 12% in what was defined as privately developed (formal, mortgageable) stock. Figure 2, below, illustrates the annual transactions between 1999 and 2003 as a percent of total proclaimed erven.

⁴ This study was jointly funded by the FinMark Trust, Ford Foundation, Micro Finance Regulatory Council, National Housing Finance Corporation, SA National Treasury and USAID. It was undertaken by Shisaka Development Management Services between 2003-2004. The study involved a survey of township residential property dynamics in 18 areas across four formerly black townships, and included a household survey of over 2000 respondents, a deeds registry analysis of secondary transactions, and interviews with key stakeholders in the process. Documents produced by the study can be found at www.finmarktrust.org.za.

Figure 3 Secondary registrations as percent of total proclaimed erven per sub-market 1999-2003 (TRPM study)⁵



While the most significant growth occurred in the privately developed sub-market, this was still well below transaction levels in comparable, non-township areas. Also, the transactions illustrated in the figure above include a sizeable proportion (37% of all transactions) that were due to properties in possession (PIPs), indicating a substantial level of dysfunction in the market (Shisaka, 2004).

The study also found that property price increases vary by neighbourhood, and that specifically, properties in former black township areas trade not only at a slower rate but also at lower values to what is found in other areas. The study compared prices of property transactions as registered in the Deeds Registry, of three township areas in Johannesburg and Ekurhuleni, and what the researchers determined were two comparable neighbourhoods outside of the township.

Table 5 Comparison of township and non-township property prices (Shisaka, 2004)

	Former black township areas			Non-township areas	
	Diepkloof	Protca North	Elita Park	Mayfair	Elandspark
Median purchase price	R104,000	R95,000	R17,000	R205,000	R153,000
Percentage formal secondary transactions 1999-2003	13	16	14	26	51
PIPs as a % of secondary	19	11	67	4	51

⁵ Shisaka Development Management Services (2004) Workings of Township Residential Property Markets: Final Report.

transactions					
--------------	--	--	--	--	--

While this price variation suggests high levels of dysfunctionality in the township market, it does place township properties squarely within the FSC mortgage target and therefore a critical area for engagement by lenders offering FSC-motivated loans.

An interesting additional component to the township property market (at least – other areas have not been analysed for this phenomenon) is the level of informal transactions. The TRPM study compared levels of reported trade as determined through the household survey, and actual transactions registered for those same areas in the Deeds Registry. Table 6, below, suggests a possible level of informal trade – calculated as the difference between reported and registered transactions.

Table 6 Extent of secondary transactions in the household survey and deeds analysis, 1999-2003 (Shisaka 2004)

	Site and service	RDP	Old Township Stock	Privately Developed	Total
Household survey	16%	15%	4%	10%	12%
Deeds analysis	2%	3%	3%	8%	5%
Potential % informal transactions	14%	12%	1%	2%	7%

Again, as noted above, these relatively high levels of informal trade, at least in the site and service and RDP markets, and the mere existence of informal trade in the old township stock and privately developed markets, suggests a level of dysfunction in the township property market.

Unfortunately, between the ABSA House Price Index and the TRPM study, significant gaps in data continue to exist. While the TRPM study provides a fairly good picture of the township market, affordable housing property price dynamics outside the townships, in the sub R180 000 bond category, have not been documented. ABSA’s analysis of the ‘affordable’ (40m²-79m²) market is limited to national generalisations which the TRPM study has demonstrated are not representative on a neighbourhood scale.

Another market where anecdotal evidence suggests there is substantial opportunity from an FSC mortgage-target perspective, is the inner city and specifically sectional title units

therein. Again, data in respect of this sub-market is not readily available. In Johannesburg, it is estimated that inner city sectionalised units go for between R40 000 – R110 000, depending on the neighbourhood (Hillbrow, Berea, Yeoville) and the condition of the unit.⁶

Further, is the homebuyer / investor dynamic and the impact that this has on property prices. Investment in inner city areas, and possibly also other low income areas, is increasingly being seen as a viable proposition by investors. With the availability of mortgage finance suddenly a possibility for low income homebuyers, such investment becomes a form of downward raiding, where it has previously been seen as an important part of urban regeneration.

While the property price boom suggests a well-functioning residential property market responding to years of pent-up demand, the reality is that supply performance varies substantially across pricing segments, neighbourhoods, housing types and historically defined areas, and is often dysfunctional. Key areas for further consideration suggested by the current performance of the residential property market for housing with a bondable value of R180 000 or less, include:

- Properties in possession (PIPs) – issues of affordability, market performance, and the consequence to lenders.
- Market thinness – issues again of affordability and market performance, as well as the availability of stock.

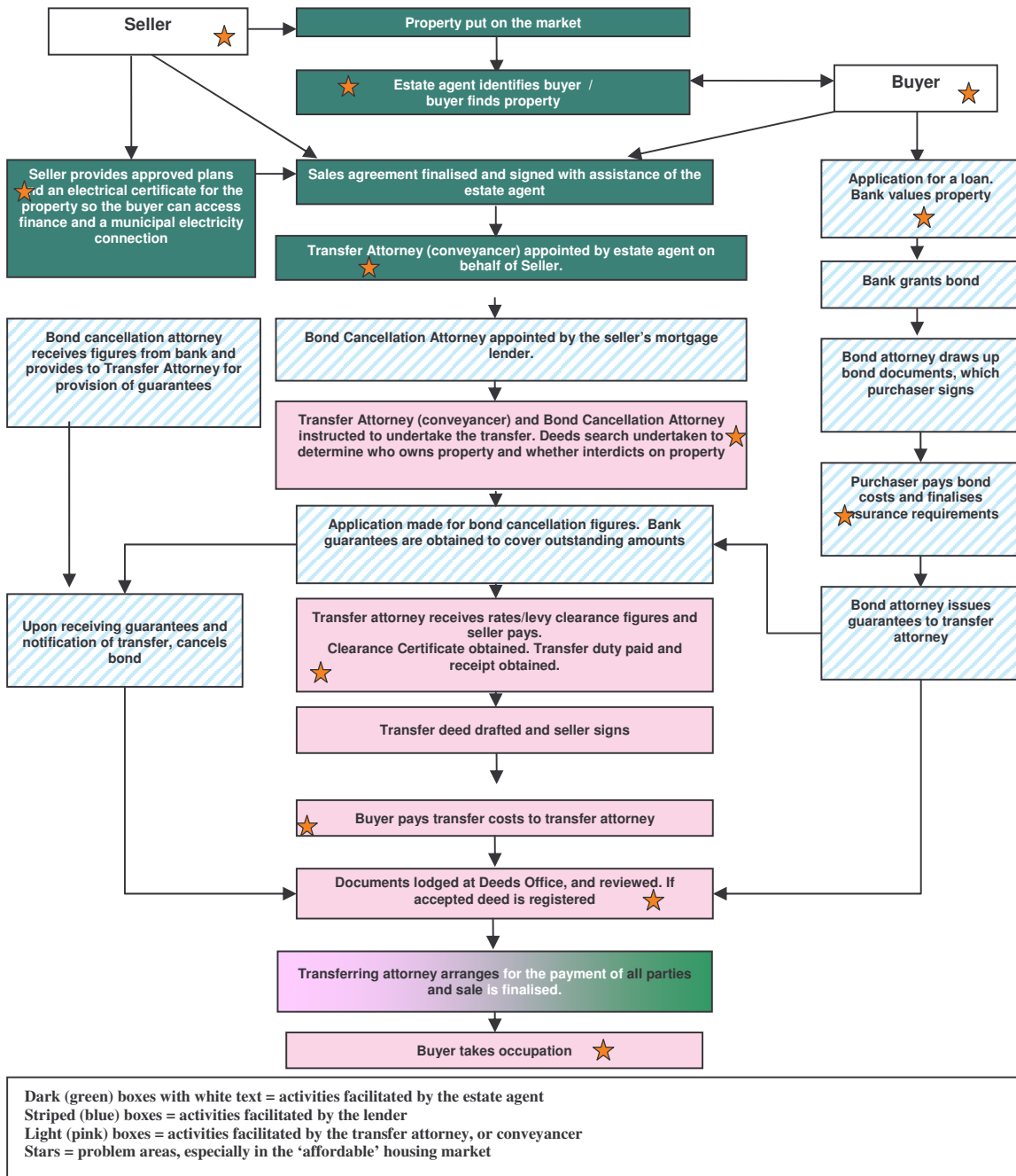
⁶ Comment made by Ian Fife, sectional title property investor, at the private sector workshop, 2 September 2005.

3 The residential resale process: key issues, impediments and risks

The standard property transfer process in South Africa is illustrated in the following diagram.⁷

⁷ This illustration is based largely on that produced by Shisaka (2004).

Figure 4 Property transfer process



How this process actually proceeds depends on various factors relating to the nature of the particular property market concerned, or the individual property involved. As illustrated above, the most common impediments or risks are in the steps marked with a star. These risks may result in time delays in the process, increases in costs or decreases in margins realized, or increased uncertainty. In the sections that follow, risks are defined in terms of three categories:

- **Technical Risk:** Relates to technical design and construction components of the housing product in question, suitable for target market, funders and authorities.
 - **Statutory Risk:** Relates to the time (and cost) implications of securing necessary statutory approvals and clearance certificates and fulfillment by the public sector of its obligations.
- 3 **Commercial Risk:** Relates to the ability, on the part of the seller (and estate agent), to find a willing and able buyer and to realize the expected value from the product. Relates further to the ability, on the part of the lender, to realize full cost and profit recovery within reasonable time period.

The risks (whether real or perceived) influence the way and manner in which the various parties to the transaction process behave as they try to mitigate the impact the risk has on their particular interest. Depending on the nature and severity of the risk, and the impact it has on their particular engagement in the residential resale transaction, individual parties might:

- Price for risk (pass direct costs on to their customers).
- Provide for it (increase margins which, in turn, increases costs to customers).
- Offset it (pass risk on to relevant service provider or through relevant insurance cover).
- Avoid it (choose not to participate in the residential resale market)
- Absorb it (take on the risk as a necessary consequence of participating in the market, understanding that the costs cannot be passed on).

The following sections consider the risks inherent in the various steps that together comprise the residential resale transaction process. While these risks apply in respect of all properties – and a worst-case scenario is set out – it is generally agreed that the materialization of these risks is most common in the ‘affordable’ housing market. Consequently, the ‘affordable’ housing market was characterized in the TRPM study as largely dysfunctional, or in some areas, functioning poorly. A summary table is attached as Annexure 1 to this report.

3.1 Identify property for sale / identify buyer

The process of identifying a property for sale, and identifying a buyer involves various players. The seller and the buyer are at the opposing ends of the transaction, facilitated in their endeavors by estate agents and advertisers. A risk analysis is summarised in the table below.

Table 7 Risk analysis for step 1: Identify property for sale / identify buyer⁸

Who Involved	Requirements	Time (benchmark)	RISK ANALYSIS					
			Potential risks / impediments	T S C	Affecting whom	Impact	R a n k	Response
<ul style="list-style-type: none"> - Buyer - Seller - Estate agent - Advertisers - Mortgage originator 	<ul style="list-style-type: none"> - Seller willing to sell – finds estate agent to assist - Buyer finds property – can choose from selection - Estate agent can realise reasonable commission - Advertisers exist 	Dependent on availability of estate agents & advertisers	▪ No estate agent	C	Seller / Buyer	Uncertainty	1	Avoid / absorb
			▪ Limited choice of properties	C	Buyer / EA	Uncertainty	1	Avoid / absorb
			▪ High cost of advertising for small firms	C	Estate agent	Increased costs	3	Avoid / absorb / provide
			▪ No advertising	C	Seller / Buyer/ EA	Uncertainty	2	Avoid / absorb
			▪ Low value properties	C	EA / Seller/ Mortgage originator	Lower fee/ realizable value	2	Avoid / absorb/ resolve (inf sale)
▪ Auctioned PIP property still has former owner resident – inability to evict	C / S	EA/ seller/ buyer	Uncertainty/ violence/ increased costs	1	Avoid/ absorb			

As illustrated above, risks associated with the identification of the property for sale and identifying a buyer are largely commercial and statutory. Commercial risks relate to the commercial viability of participating in this market at all, either as seller, buyer, estate agent or advertiser. Statutory risks relate specifically in the case when a property becomes available for sale due to foreclosure, to the inability of the sheriff to evict the former owner. In all cases, risks create a higher level of uncertainty which, given relatively low property values in the sub-R200 000 property market, is not accompanied with a higher rate of return. In fact, these risks lower the returns even more, and in some cases participants in the market face violence.

Participants in the market really have no recourse for managing these risks, either than accepting and absorbing them, or avoiding them by deciding to forego participation altogether, either as seller, buyer, estate agent or advertiser. With the decision to avoid the market by any one of the participants, the market becomes thinner, with less

⁸ T = technical risk; S = statutory risk; C = commercial risk; Rank: 1 = critical path risk; 2 = high risk; 3 = medium risk.

facilitation support, making it more difficult to operate in, and therefore less profitable. These dynamics are explored in greater detail below.

3.1.1 *The seller and the buyer*

The most critical aspect of the resale transaction process is the *willingness* of the seller to sell (supply) and the buyer to buy (demand). Property economists speak of market thickness – the existence of sufficient sellers and buyers within a particular market for there to be an easy pairing up of the two into successful transactions.

Other than the deeds registry, which provides information on already concluded transactions (and therefore an indication of demand and supply), there is no formally collected data that explicitly sets out the thickness of the ‘affordable’ market. However, recent studies undertaken in portions of the market do suggest a rather thin market of few sellers and buyers.

The TRPM survey found very low levels of willingness to sell, indicating substantial market thinness. Only 33% of households in privately developed stock, 9% of households in old township stock, 22% of households in RDP or Site and Service stock, and 38% of households in informal stock answered positively when asked if they would ever sell their homes. The reasons they highlighted for this answer varied:

- **Family asset:** Perhaps the most popular of answers related to the social or family value of the house. Households giving this response said that their township house was a family asset, with great social and utility value, that could not be traded. While they might seek to invest in additional property, a second house for instance, this particular asset was considered to be outside of the market.
- **Assessment of value:** Some respondents said that on analysis, their house’s social, utility, or asset value was greater than its financial value, and that to sell it would mean that they would lose more than they would gain. Some respondents noted that even if they moved, their house would be worth more accommodating family members who couldn’t find accommodation, than if they sold it. Others said they earned an income from an SME on the property or by providing rental accommodation, and that this couldn’t be replicated elsewhere.
- **No better option:** Others said they could not afford a better house or area that would make moving worth their while. This reason indicates that significant gaps exist in the housing ladder which militate against homeowners viewing their property as a

tradeable asset, or something that can be improved. It also illustrates the importance of information on properties that are for sale.

- **Market dysfunction:** Many argued that while they potentially could afford to spend more on their housing situation, incurring greater debt in order to facilitate a transaction was a risk they were unwilling to bear. In an environment where the property market was not functioning optimally, many had experience with default, either directly or indirectly, and the potential consequence of losing one's home altogether.

The common motivation across all of these reasons is a perception of value, and it is this that influences willingness to sell. Where a house is perceived to have higher value (whether financial, social, or other) when kept than when it is sold (and converted into financial value), it is not put on the market.

At the same time, a buyer must make his or her decisions on purchase based on the availability of suitable and desirable stock, as well as his or her ability to be relieved of financial obligations in respect of the existing accommodation. When a buyer cannot sell their house – for any of the reasons above, or because another buyer cannot be found – (and when this is necessary in order to afford the purchase of the new house) they must invariably change their position on the purchase. A study undertaken for the National Housing Finance Corporation in 2001, found that t “a frustrated potential buyer can be found in almost one out of every five urban households within the target group.”⁹ The study also found:

- A direct relationship between income and the incidence of potential buyers who had not been successful in acquiring a property. “In the lowest income group (R1000-R2600), an unsuccessful prospective buyer was identified in 22% of households, whereas the incidence dropped to only 11% amongst those earning between R4200 and R6000.” (NHFC 2001:5)
- “While incidence levels in Gauteng, KwaZulu Natal and the Eastern Cape were fairly consistent (13% - 14%), the Western Cape was found to have a very low incidence of struggling prospective buyers (4%), while the incidence in the Northern Province was extremely high (22%). (NHFC 2001: 6)

⁹ The target group for the study was households with a monthly household income of R1000 – R6000 who could be classified as “would-be-buyers” seeking formal housing, and who had been trying to purchase property for at least three months prior to the research. The research included people who were currently trying to buy, as well as those who had tried to buy in the past year but had since given up or decided to renovate their house instead.

Critically, the study identified a slow secondary market as one of the reasons for the incidence of frustrated buyers. “Nearly half of all prospective buyers living in formal houses already own their property – yet they are still experiencing difficulties purchasing another property. Three quarters of existing home owners reported that one of the reasons for their failure to purchase a house was their inability to sell the current house”. (NHFC 2001: 7)

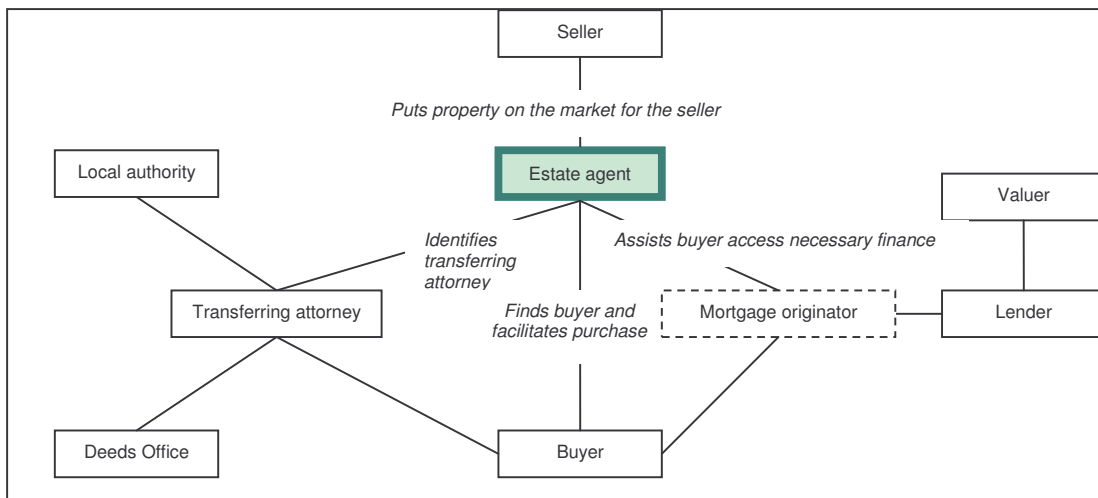
Unfortunately, a thin market is almost a self-fulfilling prophecy. Sellers and buyers behave in part on the basis of their personal decisions, and in part on the basis of what they see happening in the broader market. For an individual to elect to sell their house in a market with low levels of churn, there must be something other than the realizable financial value that is pushing them to make this seemingly radical choice. Buyers seeking out such properties are more likely to be investment pioneers, able to overcome the many barriers, than regular home seekers looking to climb one more step up the housing ladder.

3.1.2 The estate agent and property information

In principle, the residential resale transaction process is designed to ensure that the rights of the seller and the buyer respectively are upheld and that the sale transaction is effectively concluded. To assist in this, seller and buyer interact via an estate agent who understands the legislation governing the process and has linkages with the various other roleplayers involved – the transferring attorney and the lender. In terms of South African legislation, the estate agent acts on behalf of the seller, though in order to facilitate the sale, will also provide assistance (such as in the identification of a lender) to the buyer.

While the seller and the buyer have specific responsibilities in the transaction process, it is the estate agent who facilitates these to ensure a smooth transaction. .

Figure 5 Parties to a residential resale transaction (when an estate agent is available)



As illustrated above, the estate agent manages the entire resale transaction process on behalf of the seller. The estate agent:

- advertises the property and finds a buyer
- concludes an offer to purchase (or deed of sale) between the buyer and the seller
- identifies the transferring attorney (if the seller hasn't identified someone), and engages with them on behalf of the seller, ensuring that a clearance certificate is secured from the local authority
- liaises with the lender to assist the identified buyer access the necessary finance (in some cases, this can be done by the mortgage originator)

How estate agents perform this function, and the extent to which they engage in the 'affordable' market, is determined by a number of factors:

The commission structure: Estate agents perform this service on the basis of a commission – usually somewhere in the order of 6-7% of the purchase price of the property.¹⁰ Higher value properties, therefore, realize a higher fee for the estate agent while lower income properties realize a lower fee. The consequence of this is that estate agents prefer to work in the higher value, upper end property market rather than the lower end market. If the transaction process for a high value property involved more work for the estate agent than for a low value process, the commission structure would be justified.

¹⁰ Although this percentage is generally accepted in practice, a recent case heard by the Competition Commission suggested that this was unfair practice and that the commission should rather be a fee to be negotiated between the estate agent and the seller. The Estate Agency Affairs Board is currently engaged in ensuring that estate agents uphold the Competition Commission's ruling.

However, low value properties often demand more from estate agents – they involve buyers and sellers who generally are less familiar with the property market and therefore require more support; and they often involve glitches relating to title deeds, clearance certificates and access to finance. This acts as an additional disincentive for estate agents to include low value properties in their portfolios.

Social and class dynamics: An additional factor relates to the social and class dynamics of the property market. South Africa’s history has meant that race and income mirror each other, with the majority of high income earners living in high value properties being white, and the majority of low income earners in low value properties (the ‘affordable’ market) being black. Anecdotal evidence suggests that estate agent practice generally mirrors this social and class dynamic – high income, white sellers appoint white estate agents, while black estate agents can only find mandates from low income, black sellers. In fact, sellers are apparently so attune to the social and class dynamics of their neighbourhoods that even high income black sellers in high value housing seek white estate agents to act on their behalf in the transaction process. This has meant that black estate agents generally earn lower fees than their white counterparts, all because of the social and class dynamics that govern the areas and households that they are able to serve.¹¹

Under-representation in ‘affordable’ market areas: The Estate Agency Affairs Board (EAAB) does not calculate what percentage of its 64 159 registered estate agents serve the ‘affordable’ housing market. However, given the above, it can be assumed that few more, if not far less than the EAAB’s 2 200 black registered estate agents work in low income markets that would meet the FSC mortgage limit. This supports the TRPM assertion that the ‘affordable’ market is grossly under-served by estate agents.

Inexperience with ‘affordable’ market properties: The exam for estate agents does not address the specific issues which might be confronted in the ‘affordable’ market, and thus this represents an enigmatic area for many agents. Further, it has been noted that at any given time, 30% of all practitioners are new comers to the industry. While this allows opportunities for upfront training in respect of the ‘affordable’ market, it also means that a significant proportion (as many as 20 000 of the current 64 159 registered estate agents nationally, according to Realty Elk CEO Mike Bester) are inexperienced agents.¹²

¹¹ While this should have been an important issue for consideration by the Property Charter, it is not addressed.

¹² From Rodney Hayter website: <http://www.rodneyhater.com>

Limited advertising of ‘affordable’ housing properties for sale: Limited or no advertising of ‘affordable’ housing for sale: Estate agents who do operate in ‘affordable’ markets argue that they cannot afford the costs associated with advertising their properties and for this reason, the level of information relating to the availability of affordable houses for sale is extremely limited. The costs of advertising are a result of:

- *Failure by small agents to achieve economies of scale.* For small, one-office estate agents to take out an advert in the Sowetan, for instance, they need to pay once-off costs upwards of R30 000 because they do not have sufficient turn-over to warrant taking out an annual advertising subscription.¹³ Advertising is only cost effective when it is done at scale.
- *Dominance of Saturday Star Property Section.* Some have suggested that the dominance of the Saturday Star’s property section, the majority share of which is owned by the large estate agents creates a barrier to the emergence of other advertising media and the ability of smaller estate agents to advertise their properties.

In 2003, the Sunday Times launched a property section which organized its property listings by location and cost – as opposed to the Star’s section which organizes listings by agent. The section charged R45 per advert in the print edition, but offered free advertising on the linked web edition. It has been alleged that, seeing the Sunday Times property section as competition to their own Saturday Star property section, the major estate agents refused to list their properties with the Sunday Times, and threatened other estate agents who would have been entitled to a dividends from the Saturday Star that should they continue advertising with the Sunday Times, their dividends would be withheld. Further, it was alleged that the agents threatened to boycott a major banking group who were advertising in the Sunday Times property section and as a result of this the bank withdrew their advertising. It has been suggested that as a result of this the Sunday Times Property section was unable to achieve financial viability.

¹³ Comment made by Thabo Matsho, estate agent operating in East Rand townships, at private sector workshop, 2 September 2005.

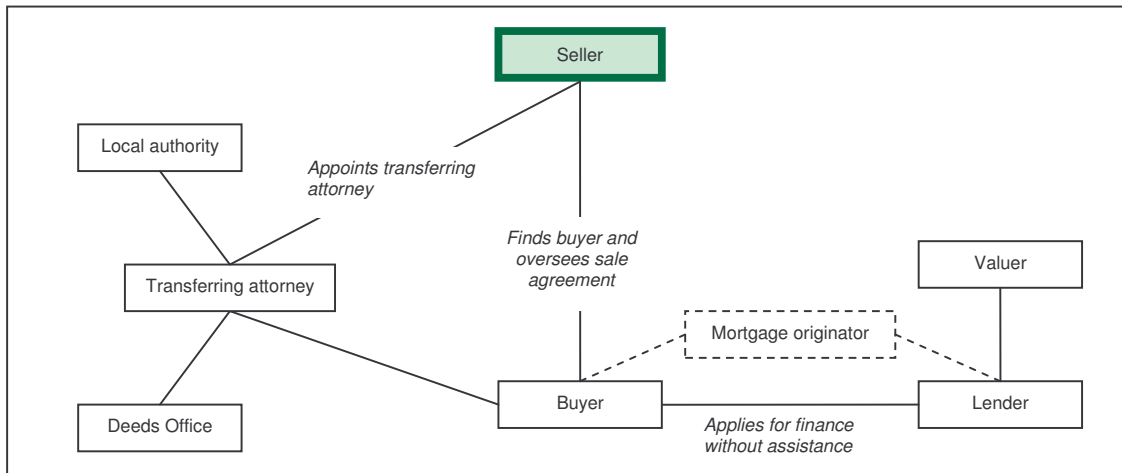
The issues relating to estate agents and the availability of information regarding ‘affordable’ housing should clearly be a matter for the Property Charter to address. However, the draft property charter makes only brief reference to mechanisms to address the problems in the secondary residential property market and includes no targets for encouraging estate agents to operate in ‘affordable’ housing markets or for addressing the social and class dynamics that operate in these markets.

When the estate agent is taken out of the resale transaction process, it becomes the seller who must facilitate the transaction. This undermines the transaction because:

- The seller is limited in his or her ability to determine the market value of the property, and to argue the price up with a buyer.
- There is no independent arbitrator to mediate any dispute or renegeing of the offer to purchase (or deed of sale) agreement, should such arise.
- Transfer attorneys are also under-represented in ‘affordable’ market areas. It may be difficult for a seller to identify this professional on their own.
- The buyer needs to negotiate finance with the lender on their own, and is not given the benefit that the agent’s prior relationship with the lender allows.

The new configuration of relationships is illustrated in figure 5, below.

Figure 6 Parties to a residential resale transaction (when an estate agent is not available)



Without an estate agent, and without information about the local property market, the seller and buyer’s jobs become much more difficult. Although no definitive data exists, the TRPM study suggests that most respond to this impediment by shying away from the residential resale market entirely – prospective sellers holding on to their homes and prospective buyers deciding rather to stay where they are in their current accommodation. This has a negative impact on the thickness of the market, further undermining market conditions for the residential resale transactions.

3.2 Sign sales agreement

Signing the sales agreement involves the same players as in the first step: the buyer, seller, and estate agent. A risk analysis is summarised in the table below, and explored in more detail in the sections that follow. The primary area of risk relates to the house that is being sold and the impact that problems in this regard have on various components of this step.

As illustrated below, risks associated with signing the sales agreement are technical, statutory and commercial. Technical risks relate to the house and its suitability for sale given statutory requirements. Statutory risks relate to the speed with which approvals are passed by the local authority. Commercial risks relate to the general understanding of the buyer and seller of the sales transaction process – a risk that is exacerbated by inexperience in the transaction process and the absence of the estate agent as faciiltator. In all cases, risks relate to delays in the sales transaction, and in some cases, also increase the costs for specific participants.

Table 8 Risk analysis for step 2: sign sales agreement¹⁴

			RISK ANALYSIS					
Who Involved	Requirements	Time (benchmark)	Potential risks / impediments	T S C	Affecting whom	Impact	R a n k	Response
- Estate agent, sales administrator or attorneys - Buyer - Seller	Seller required to provide: - Approved plans - Electrical certificate Buyer will be required to provide all or some of the following documents: - Identity documents - Marriage certificate - Salary slip A credit check may be undertaken Sales agreement developed and signed by Buyer and seller/developer. Transfer Attorney and Bond Cancellation attorney notified and instructed to undertake the transfer.	1 – 2 days if all doc's are provided	<ul style="list-style-type: none"> ▪ Add-ons done without plans ▪ Poor electrical systems ▪ Slow local authority approval processes ▪ Buyer doesn't have documents, and suffers delays in accessing them ▪ Buyer / seller misunderstand agreement ▪ Without EA assistance, seller doesn't know a transfer attorney 	T T S S C C	Seller Seller Seller / EA Seller / EA EA / buyer / seller Seller	Increased costs Increased costs Delays Delays Delays / conflict Delays	3 3 3 3 3 2	Avoid / absorb Avoid / absorb Avoid / absorb Avoid / absorb Avoid / absorb Avoid / absorb

In the absence of a functioning market, there is very little that the participants can do to manage the risks, other than absorb them as part of the regular transaction process, or avoid them by operating in a different market or not at all. These dynamics are explored in greater detail below.

3.2.1 The house

Even if a buyer has agreed to purchase a house, its quality continues to be important in a sale transaction process for two reasons.

First, in terms of the Electrical Installation Regulations under the Occupational Health and Safety Act, No 85 of 1993, the Seller must be in possession of a valid **Electrical Compliance Certificate** (ECC) before he is legally entitled to sell his house.¹⁵ Specifically, the regulations state that if registration of transfer of premises takes place the Buyer incurs by law an obligation to be in possession of an ECC. This certificate is provided to the Buyer by the Seller.

¹⁴ T = technical risk; S = statutory risk; C = commercial risk; Rank: 1 = critical path risk; 2 = high risk; 3 = medium risk.

¹⁵ Drawn from an article originally published on page 2 of [The Sunday Tribune](http://www.busrep.co.za/index.php?fArticleId=2640103) on July 23, 2005.

The regulations were designed to enforce minimum safety standards for electrical installations in buildings – and the regulations lay down minimum standards of safety for domestic installations. It is the Seller’s responsibility to arrange for an electrician (accredited to the Electrical Contracting Board of SA) to inspect the electricity installation in the house is to code. This must be as close to the sale date as possible because an ECC is only officially valid on the day that is issued – if any alterations are made, a new ECC must be obtained before the sale can go through.¹⁶ If there are problems, the electrician will not issue a certificate, and the Seller will have to arrange for the necessary repairs to be done. Most offers of purchase stipulate that the seller provide an ECC as a condition of sale. Consequently, the quality of the electricity installation in the house and the potential for additional costs is the Seller’s risk.

Second, in most cases the Buyer will request the **approved building plans** for the house from the Seller. The National Building Regulations and Building Standards Act determine that any new building or alteration that adds on to or changes the structure of an existing building must be approved by the municipal Planning or Development Management Department. The City will determine if the structure complies with the Zoning Regulations of the Town Planning Scheme. In principle, the transaction process does not require the provision of approved house plans from the Seller to the Buyer. However, if the Buyer ever wants to undertake structural alterations, he or she will need the current approved plans for building in order to have the plans for the alterations approved. These plans can be accessed from the Municipality – it is not necessary to access them directly from the Seller. However, if the plans accessed from the Municipality are different from the actual structural reality on the property – if the Seller made alterations without having plans approved – the Buyer could risk having the unauthorized structures torn down by the Municipality (especially if they cross building lines) or being fined. Further, if the unauthorized structures mean that the coverage allowable for the property is already met or exceeded, the Buyer’s own building plans could be undermined. To manage this risk, empowered or informed Buyers usually ask for approved building plans as a condition of sale.

In principle, building plans should be approved before construction. In practice, however, homeowners undertake alterations, or even build entirely new structures on their properties without plans. This informal type of construction may work for the homeowner at the time, and indeed the building or addition might be structurally sound. However, if the Buyer requests approved plans for the property, the Seller who did not

¹⁶ http://www.pamgolding.co.za/pamgoldingpubs/research_article.aspx?id=38

have his building plans approved in advance of construction faces two problems. If the new construction crosses certain building lines on the property, or contradicts other zoning requirements, the City has the authority to order the structure to be torn down – this will invariably also lead to a decreased purchase price for the property. If the structure complies with all the requirements, plans will still need to be drawn and approved retrospectively. In some municipalities the matter is dealt with as a statutory requirement – a building inspector’s certificate is required before the rates clearance certificate can be issued¹⁷.

Having building plans approved, whether in advance or retrospectively, is not a simple affair, involving fees, time and considerable attention by the homeowner. In Johannesburg, four separate and quite detailed documents are required from the homeowner before the Council will consider the building plan¹⁸:

- *A completed **application form**, signed by the owner of the property or his/her authorised representative (proof of authorisation is required) together with a copy of the **registered Title Deed**. The Title Deed must be obtained either from the attorneys who handled the transfer of the property, the financial institution that granted a first mortgage bond over the property, or the Deeds Office.*
- *A copy of the approved **Site Development Plan**, if this is required in terms of the Zoning Regulations that apply to the stand.*
- *A separate form also needs to be completed by a **Professional Engineer or Technologist** registered with the Engineering Council of South Africa when structural work such as reinforced concrete floor and roof slabs, special reinforced foundations, etc are part of the proposed building. Different certificates or designs need to be submitted depending on the technical aspects of the plan. Homeowners should consult an Architect or Engineering Professional in this regard.*

In addition, there are fees involved for processing the application. A standardised set of tariffs, as set out in the National Building Regulations, applies when calculating the fee payable:

1. *To consider applications made in terms of Section 4(1) of the National Building Regulations and Building Standards Act, the charges are as follows:*

¹⁷ An article published in 2002 comments on the phased introduction of a building inspector’s (BI) certificate, as a requirement for the issuing of a rates clearance certificate. See: <http://www.wylie.co.za/Site/CMS/Article-Body.asp?articleID=75>

¹⁸ http://www.joburg.org.za/help/building_plans.stm. The following is quoted directly from the City of Joburg’s website.

- *R 8.60 per m² or part thereof for the first 1 000 m² of building work.*
 - *R 7.30 per m² of part thereof for the second 1 000 m² of building work.*
 - *R 6.15 per m² or part thereof for the balance greater than 2 000 m² of building work.*
 - *0,30% of the value of building work for alterations to existing buildings or buildings of a special character such as factory chimneys, spires or similar structures.*
 - *A fee of R 205.00 for a new dwelling house of 50 m² or less in area.*
 - *In the case of mass-contracted low cost housing projects funded by means of National Housing capital subsidies, a fee of R 115 per master plan and R 28 per erf on which the master plan is repeated.*
 - *The minimum charge in respect of any building plan, other than contemplated in 1.5 and 1.6, shall be R 325.00.*
 - *Portion of buildings projecting over Council owned land (these charges are in addition to normal plan submission fees):*
 - (a) Areas of 10 m² and less R 320.00*
 - (b) Areas in excess of 10 m², R 320.00, plus R 7.35 per m² or part thereof.*
2. *To authorise minor building work in terms of Section 13 of the National Building Regulations and Building Standards Act, 1977, a charge of R 140.00.*
 3. *To authorise the erection of a temporary building in terms of Regulation A23(1) a fee of R 140.00.*
 4. *To permit the use of a street by a person undertaking any work of erection or demolition in terms of Regulation F1(4), a fee of R 7.30 per m² for every week or part thereof, with a minimum fee of R 140.00.*
 5. *To authorise a permit for the demolition of a building R 407.00.*
 6. *To authorise a permit for excavations R 407.00.*
 7. *To authorise a permit for encroaching over Council owned land for the purpose of building operations R 407.00.*
 8. *Approval of cellular phone structures and masts R 500.00.*

Of course, these fees are in addition to the actual cost of having the plan drawn, which also varies depending on the scale of the alteration or building, and the availability of draughts people in the local community.

Research into the home improvements activities of three communities of Servcon right-sizing clients (Rust, 2003) found that where the municipality was active in requiring building plans, the costs involved were a considerable barrier to households improving their homes.

Table 9 The cost of building plans in three Servcon communities (Rust, 2003)

	Vosloorus, Ekurhuleni Municipality ¹⁹	Embalenhle, Govan Mbeki Municipality ²⁰	Motherwell, Nelson Mandela Municipality ²¹
Guiding policy	National Building Regulations	National Building Regulations	National Building Regulations
Fee for plan approval	R6 per m ² with minimum charge of R350	R7 per 10m ²	R4.80 per m ² for 0-30m ² R9.70 per m ² for 30 – 50m ² R12.80 per m ² for 50-1--m ²
Example: 40m ² structure	R350	R28	R388
Going rate for having a plan drawn ²²	Respondents report total cost (including plan approval) at around R400 - R650. Net cost of drawing the plan therefore is about R50 - R300.	Respondents report a total cost of about R1200. Net cost of drawing the plan therefore is about R1173.	Between R200 – R400 for about 40m ²
Total for a 40m² structure	±R650	±R1200	±R588 - R788

And yet, a significant proportion of homeowners improve their homes. In the TRPM (Shisaka, 2004) research, it was found that just under half of households in the informal and incremental sub-markets had improved their homes and just under three quarters of households in the old township stock and privately developed sub-markets had improved their homes. Of all households who had made such improvements, generally fewer than 10% had financed their improvements with credit; most used savings. Given the difficulties and costs involved in having plans approved, it is likely that the vast majority of alterations were undertaken without plans approved. These houses therefore become difficult to sell, and their sellers less likely to participate in the market.

The issue of approved building plans has special resonance in site and service properties developed originally as part of the former IDT23 Capital Subsidy Scheme, in the early

¹⁹ Discussion with the Chief Building Inspector, Boksburg, Ekurhuleni, May 2003.

²⁰ Discussion with Chief Building Inspector, Govan Mbeki Municipality, May 2003.

²¹ Discussion with Chief Building Inspector, Municipal Official of the Nelson Mandela Municipality, Building Inspectorate Division, May 2003.

²² Anecdotal evidence as reported by respondents and verified by Building Inspectors.

1990's. In terms of the subsidy scheme, beneficiary households were allocated formal ownership tenure over a serviced plot of land which included a standpipe and a toilet. This R7500 (at the time) investment by the state was then consolidated over time with individual household investment as beneficiaries built their own homes. In terms of the TRPM (Shisaka 2004) study, the average selling price of these properties in the formal market (as registered in the Deeds Registry), was R54 000. Clearly, households have made considerable investments in these properties. However, if these investments were made without formal building approval, the requirement to access retrospective approval is likely to undermine the presence of these houses in the secondary market.

3.3 Bond application

In the bond application step, the financial institution, and in some cases, the mortgage originator, is added to the collection of players. A risk analysis is summarised in the table below, and explored in more detail in the sections that follow. Key risks relate to the financial institution and how it engages in this market, the likelihood that the Buyer is eligible for mortgage finance, and the availability of the necessary documentation for the bond application process.

Table 10 Risk analysis for step 3: bond application²⁴

			RISK ANALYSIS					
Who Involved	Requirements	Time (benchmark)	Potential risks / impediments	T/S/C	Affecting whom	Impact	1/2/3	Response
- Financial institution (FI)	Documents provided as above:	1 week	As above, documentation not collated	S	Seller / EA	Delays	3	Absorb
- Buyer	- Identity documents		Redlining / geographical over-exposure	C	Buyer/ seller/ EA	Uncertainty / failure of sale	2	Absorb / resolve
- Estate Agent/ Developer	- Marriage certificate		Under valuation of property	C	Seller/ EA	Uncertainty / limited profit	1	(instalment sale)
- Bond conveyancer	- Credit assessment information		Over valuation of property	C	Buyer/ Seller	Over-indebtedness: value	1	Avoid / absorb
- Mortgage originator	- Salary slips FI values property, does structural assessment		Buyer / seller confused regarding the	C	Buyer/	Delays	3	Absorb

²³ Independent Development Trust

²⁴ T = technical risk; S = statutory risk; C = commercial risk; Rank: 1 = critical path risk; 2 = high risk; 3 = medium risk.

Who Involved	Requirements	Time (benchmark)	RISK ANALYSIS					
			Potential risks / impediments	T/S/C	Affecting whom	Impact	1/2 /3	Response
	FI provided copy of the sales agreement FI appoints a Bond Conveyancer to register a new bond. Bond Conveyancer draws up bond documents which Buyer must sign at the Conveyancers offices. Bond Conveyancer issues guarantees and sends to Transferring Attorney		process Conveyancer over-subscribed Buyer has a bad credit record and cannot get bond	C	seller/EA Buyer/seller/EA Buyer / Seller/EA	Delays Failure of sale	2	Absorb Absorb / resolve (installment sale)

As illustrated above, risks involved in the bond application process are largely commercial, although statutory risks may arise if the buyer needs to access documentation. If the sale of the property depends on mortgage finance, any obstructions to this process create uncertainty and delays. While lenders dispute the existence of redlining, other market participants contend that it still exists. Further, lenders do have certain criteria to guard against what they call over-exposure in an area. If the Buyer cannot access finance, or if the property is for some reason deemed un-mortgageable, the Seller and Buyer may reach an installment sale agreement. Otherwise, the only recourse by the various players is to avoid the market and its risks entirely, or to absorb these as a regular part of the process. Again, given the nature and value of the market, increased risks do not necessarily result in increased returns, and so the propensity to avoid the market is generally greater.

3.3.1 Loan accessibility

The critical issue in the bond application step is that the buyer is approved for the required mortgage finance. Issues relating to property valuation are addressed below.

Affordability is addressed in a separate report looking at demand. Access to finance also relates, however, to an individual's own credit record.

When a Buyer applies for finance, a credit check is undertaken with one of the various credit bureaus operating in the country. In June of this year, a debate was started by the Financial Sector Campaign Coalition when it argued for a blanket amnesty to be granted to credit defaulters. At the FSCC's conference, chairperson Blade Nzimande said that "if we are moving to a new credit regime, let's give people once chance to restart their economic lives." His remarks were supported by the Minister of Housing, Dr Lindiwe Sisulu, who also spoke at the conference. She argued that credit bureaus had become "the bane of the poor", and that they were "a serious stumbling block that renders three-quarters of the working class ineligible for finance." Not responding directly to the Minister's point, the Consumer Profile Bureau contends that "'Less than 15 percent of names currently on credit bureau databases bear any reference to people with judgements against them.'"²⁵

At issue is that the prospective number of Buyers might be diminished in the face of bad credit records. Whether this is an issue of the credit bureaus and how they collate and publish their data (there has been, for instance, a long-standing debate regarding for how long the credit bureaus keep bad data and whether they update their systems when the bad credit experience has been rectified) is not the subject of this report. However, when a Buyer only discovers a bad credit record at the point of applying for a mortgage, after they have made an offer to purchase, this can delay or even undermine the sale agreement. It is a risk that both the Seller and the Estate Agent have to bear.

In some cases, Sellers have been known to manage this risk by offering the property on a self-financed installment sale arrangement to the Buyer. This happened, for instance, among sectional title units in the inner city where Sellers owned the properties outright and could afford an installment payout. However, these arrangements can be complex and rely on the capacity of the Seller (whether an individual or company) to make the arrangements and afford the risk that the installment sale model involves.

3.3.2 Property valuation

Financial institutions traditionally value a property before agreeing to extend a mortgage. If the mortgage application is for more than the value determined by the financier, the application is generally denied. If it is for less than the value determined by the financier, there is a greater likelihood of the application being approved. Because the availability of finance is often the key determinant of affordability, product price can become a function of value as determined by the lender – that is, lenders can lead the process by determining a value for a property rather than follow the process by providing finance for a property whose value has been determined by the market. The distinction is a subtle one, for financiers argue that it is the market value (an agreement between a willing buyer and willing seller) that their valuers illustrate. And yet, a buyer and seller may agree on a

²⁵ ANC News.

price that a valuer determines as being too high from the financial institution's perspective.

Market value is defined in terms of the International Valuation Standards Committee definition as

“The estimated amount for which a property should be exchanged on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion”.

While not directly related to the valuation of residential property, the SAPIX/IPD Property Valuation Guide (May 2004) clarifies that “the valuation of property is not an exact science with the process being partly scientifically based and partly opinion based. A Valuer's familiarity and knowledge of the property and economic environment directly influences the quality of the valuation produced.” This presents a number of problems in a low-churn market that has historically been unserved by financial institutions. Few valuers have experience in the sub-R200 000 property category and in the absence of an existing market, there is little on which to base a valuation. Further, implicit in the market-based (comparative) method of valuation is the concept of housing sub-markets. Aside from the TRPM (Shisaka, 2004) research which was limited to former black townships (and found four sub-markets even in that area), little has been made to link research into low income housing market areas with the valuation process.²⁶

An alternative method of valuation could be the replacement value of the unit, though financiers argue that this is of little use when the security for a mortgage is being measured. The mortgage instrument relies on the fact that in the event of foreclosure, the amount lent out can be recouped through the sale of the property. In a thin market with few buyers, sale prices will necessarily be depressed. Still, some suggest that if banks wish to build this market, some cautious “market-creating” through a more flexible and targeted application of standard valuation procedures would be worthwhile.

Finally, some argue that there is a skills shortage of qualified, independent, experienced valuers.²⁷ This is even more pronounced for lower income properties which have had a slower churn.

As a result of all of these factors, a chicken-and-egg scenario emerges where valuations keep prices low, which in turn keep valuations low. Anecdotally, some have suggested that for the Soweto market, a standard value of R50 000 has been applied, irrespective of the property, its condition, its location within the township, etc. While the sizes reported

²⁶ Some cities have addressed the issue of valuation in lower income areas, as it has a direct bearing on their ability to collect rates. The Cape Town municipality has developed an innovative model to determine property values (known as the “Computer Assisted Property Valuation (CAMA) Model”). However, the Valuation Manager for the City is concerned that the model is not wholly accurate in respect of a number of areas in the City, primarily because there is so little data available. He argues that there are very few value professionals who will go into and study formerly black areas and consequently he has no data on which to base his assessment. (Discussion with Emil Weichardt, the Valuation Manager for the City, July 2003.)

²⁷ Business Day 28 November 2003, “Call for standard property valuations”

of some more recent mortgages dispute this allegation, the impression remains that township properties are undervalued. In the inner city, investor Ian Fife argues that there is no basis on which to determine the value of sectional title properties, and that this adds to a hesitancy on the part of lenders to extend finance (causing delays in the bond application process) while keeping prices down.²⁸

3.3.3 *Bond and transfer costs*

Transfer costs include the transfer duty (a tax levied on the transfer of the land, based on the highest of either the price paid for the property or the fair market value thereof), the bond registration fee, and conveyancing costs. In his 2005 budget speech, Finance Minister Trevor Manuel announced that properties costing less than R190 000 would be exempt from transfer fees. Whatever is payable, however, these costs can come as a surprise to the Buyer, especially if the property itself is pushing the Buyer to the margins of their affordability.

Shisaka (2004) found that “the costs of transferring a property using the formal transfer process is estimated to be between R2,75529 for a property costing R50 000 (6% of the purchase price) and R4,90030 for properties costing R100 000 (5%). While this is comparatively low in respect of international norms” (where costs range from 4% of the purchase price in Britain to 13% of the purchase price in the United States) these costs can be prohibitive for low income households in the FSC target market with incomes between R2500 and R7500.

In addition, the timing of transfer requirements could be difficult for households on the margins of their affordability. New regulations passed on 1 May 2005 specify that conveyancers must call for transfer duty to be paid immediately after the deed of sale is signed if transfer is expected to go through within the usual 2-3 month period. Previously, conveyancers were able to allow transfer duty to be paid up to one month prior to transfer – this gave the Buyer an opportunity to pay the deposit and the transfer costs separately, and assisted in his cash flow management. This will no longer be possible. One reason for this is that the Receiver has streamlined forms to facilitate electronic lodgement and payment of transfer duty. It is expected that this process, which will expedite this step in the transfer process, will be implemented in the final quarter of 2005.³¹ This will only apply in respect of properties sold for more than R190 000 – and then a 5% transfer duty will be payable (i.e. R10 000 for a R200 000 house).

²⁸ Comments made at the private sector workshop, September 2005.

²⁹ Comprising R1200 tariff fee to the Bond Conveyancer; R55 Deeds office levy; R1500 fee to the Transfer Attorney.

³⁰ Comprising R1800 tariff fee to the Bond Conveyancer; R200 Deeds office levy; R2900 fee to the Transfer Attorney.

³¹ http://www.pamgolding.co.za/pamgoldingpubs/research_article.aspx?id=37

3.4 Fulfilling pre-transfer requirements

Fulfilling pre-transfer requirements depends heavily on the existence and clarity of the title deed and the ability to access a clearance certificate. A risk analysis is summarised in the table below, and explored in more detail in the sections that follow.

Table 11 Risk analysis for step 4: fulfilling pre-transfer requirements³²

			RISK ANALYSIS					
Who Involved	Requirements	Time (benchmark)	Potential risks / impediments	T / S / C	Affecting whom	Impact	1 / 2 / 3	Response
- Estate Agent - Conveyancer [Transferring attorney (TA)] - Buyer - Seller - Financial Institution - Bond Cancellation Attorney	TA requires personal information – identity documents, marriage certificate etc TA undertakes deeds search to determine if there are any interdicts on the property. If so the TA informs the relevant parties and provides FI guarantees as required. If there is a bond over the property the TA writes to the FI to inform them that the property has been sold. TA provides FI guarantees for the bond amount owing. FI instructs Bond Attorney to forward the title deed to the TA and to cancel the bond. TA writes to Municipality to obtain rates clearance charges to end of month when transfer will occur. Seller required to provide specified funds which are paid to the Municipality and a Clearance Certificate is issued.	4-6 weeks	- As above, documentation not collated - Seller doesn't officially own property - Problems with title deed: servitude, interdict, bond guarantee, etc. - Rates and services accounts outstanding - Rates and services accounts contested by seller - Rates and services arrears greater than property value - Municipality anxious about non-payment – sets high deposit - Seller / buyer	S S S C S C C C C	Seller / EA Seller/buyer/EA Seller/buyer/EA Seller EA/buyer Seller/EA/buyer Buyer Seller/buyer/EA Seller/	Delays Delays & uncertainty Delays & uncertainty Delays & increased cost Delays Deal fails Increased costs Delays	3 1 1 1 2 2 3 3 3	Absorb Avoid/absorb/resolve (informal sale) Avoid/absorb Avoid / absorb Avoid/absorb Avoid/absorb Delays Avoid/absorb

³² T = technical risk; S = statutory risk; C = commercial risk; Rank: 1 = critical path risk; 2 = high risk; 3 = medium risk.

			RISK ANALYSIS					
Who Involved	Requirements	Time (benchmark)	Potential risks / impediments	T / S / C	Affecting whom	Impact	1 / 2 / 3	Response
	Buyer must pay service deposits to the Municipality Buyer signs power of attorney.		misunderstand the process - Taxes outstanding		Buyer/EA			Avoid/absorb

As illustrated above, risks involved in fulfilling pre-transfer requirements are both statutory and commercial, and lead to delays, uncertainty and increased costs. This is a necessary step for which there is no recourse to the Buyer or Seller – they must either absorb the risks as a normal part of the process, or avoid transacting altogether. These are also critical path risks: if they transpire and cannot be resolved, the sale transaction will fail. Again, given the nature and value of the market, increased risks do not necessarily result in increased returns, and so the propensity to avoid the market is generally greater.

3.4.1 The title deed

The title deed is the document prepared by the transferring attorney (or conveyancer) reflecting the ownership of the property. When a transfer takes place, the existing title deed is superceded by the new title deed which is executed in the Deeds Office by signature by the conveyancer and the Registrar of Deeds. This is the owner’s proof of ownership.

In principle, owners of property should either personally have a copy of their title deed, or if a financial institution holds a mortgage over the property, the title deed should rest with the financial institution. However, the incidence of inheritance and informal trade of low income properties in at least the former black townships (Shisaka, 2004) suggests that the existence of a valid title deed cannot be assumed. Servcon has worked with properties where the title deed was as many as eight transactions away from the current occupant.³³ This becomes an exceptionally difficult issue to resolve as informal transactions are either not recorded at all (this is often the case in inheritances) or through informal means (for instance, witnessed at the Police Station) that are not recognized by the deeds registry. The TRPM study (Shisaka, 2004) found that “land title is not available for a significant portion of households, excluding those in the privately developed sub-market, where it does not appear to be a problem.”

³³ Comment made by Francis Collins, Servcon, at the Public Sector Workshop, September 2005.

Where a title deed is available, there may be problems that undermine an easy transaction. When the Surveyor General's Registration of Real Rights in Land Programme examined a large sample of title deeds to ensure compliance and remove errors, for instance, 26% of 3 million title deeds examined across South Africa were rejected as unregistrable due to conveyancing errors, attachments, interdicts or other legal constraints (Shisaka, 2004). The assumption is that these title deeds represented infrequently traded properties – and that this would relate primarily to low cost residential properties and possibly also farm land. Anecdotally, estate agents suggest that title deed errors are generally area bound, tied to a specific development where the developer either failed to finalise the township establishment and transfer requirements, or permitted errors in the title deed.

The TRPM study (Shisaka, 2004) found that delays in proclamation, the opening of township registers, or the transferring of individual owners meant that many current township residents do not have clear title for their residences. Specifically, state subsidized (RDP) units face delays in transfer – the TRPM study found that of the 1,5 million houses that had been completed or were under construction as of December 2003, only 1,3 million had been transferred to beneficiaries.³⁴ Of the estimated 878 000 houses developed as Old Township stock, 47% had been transferred at the time of the TRPM report's publishing.

A further issue relates to the names registered on the title deed. Servcon, again reports of title deeds registered in the names of both spouses in community of property, which were untradeable because spouses had disappeared and couldn't be traced.

Interestingly, the TRPM study also found that an overwhelming majority of households felt secure in their housing, irrespective of whether they were able to prove this with a title deed. This suggests that a Seller might be surprised to find he does not have a title deed, or that there are restrictions that prevent the sale he intends to make. Without a title deed, a formal transaction cannot go ahead.

3.4.2 The clearance certificate

Section 118 of the Local Government: Municipal Systems Act of 2000 governs the issuing of a clearance certificate by a local authority to a conveyancer to effect transfer of property to a new owner. The Act requires that all amounts due to the municipality - service fees, surcharges, property rates and other municipal taxes – on date of application, in connection with the property must be fully paid for two years prior to the date on which an application for a clearance certificate was made. While clearance certificates were previously required to be valid for between six to eight weeks at the moment of transfer, the Municipal Systems Act has increased this requirement to 120 days (4 months). The provision means that sellers and buyers in most municipalities have to pay

³⁴ The TRPM study surveyed eighteen areas. Of these, six areas did not have township registers opened or individual title deeds transferred, even though residents had been living there for over five years.

in excess of six months worth of rates in advance in order to get the clearance certificate. In one press report it was noted that in Durban, the municipality issued rates assessments up until the end of August 2005. The next rates assessments will be issued up until the end of the next municipal financial year 30 June 2006.³⁵

In all cases, the legal owner of the property is wholly responsible for the payment of rates and services charges, even if the municipality concludes services agreements directly with the consumer. In May 2005, the Constitutional Court found in favour of municipalities not issuing clearance certificates to transfer property that was sold, if there were arrears in electricity and service payments. The identity of the defaulters – whether they were tenants or illegal squatters – was considered irrelevant to the court.³⁶ An interesting angle taken by the Constitutional Court was that it associated municipal services with property value – arguing on this basis that owners seeking improved values were required to honour their municipal obligations.

It is not clear how widespread the problem is – detailed data on municipal arrears is not available on an area basis. The TRPM report quotes data from the Department of Provincial and Local Government’s Project Viability programme. At the end of June 2003, consumers owed R23,8 billion to municipalities, primarily for water and rates. The problem may be less relevant, however, for very low income earners; many municipalities have adopted policies that ease the responsibilities of lower income earners in the payment of rates and taxes³⁷:

- In Cape Town, properties valued at less than R50 000 are exempt from rates and taxes.
- The eThekweni municipality incentivises payments by writing off arrears in respect of a specific period for poor households in arrears of more than R500 for ninety days and live in homes valued at less than R80 000. The eThekweni policy allows for a one fiftieth reduction in the arrears for every month that the current bill is paid. Arrears relate primarily to water. Rates arrears are more easily recoverable because the City has the option of repossessing the home and selling it.³⁸
- In Ekurhuleni, the municipality exempts persons earning less than R800 per month from paying rates and taxes.
- In Johannesburg, properties valued at less than R20 000 are exempt from rates and taxes, and arrears have been written off in specific areas. In May 2005, the City wrote off R1,5 billion owed specifically by the poor, in an effort to register these households to access free services (50kWh of free electricity and six kilolitres of free water per household per month). Households who qualified for free services are the unemployed, pensioners and grant recipients.³⁹

³⁵ <http://www.rodneymhayter.com/article.php?article=1937> Article by Keith Wakefield, CEO of Wakefields Unpaid rates, taxes and services can delay transfer (submitted on 10 August 2005)

³⁶ YDL Newsletter 5/26/2005: Constitution looks good for property owners.

³⁷ Reported in Shisaka (2004)

³⁸ http://www.news24.com/News24/South_Africa/Politics/0,,2-7-12_1703484,00.html. “Dbn wants to write off debt”. Posted 11 May 2005 at 16:46.

³⁹ http://www.joburg.org.za/2005/may/may4_debt3.stm. Article by Ndaba Dlamini “Free services for Joburg’s indigent”, 4 May 2005

Still, in order to be registered as exempt from all or a certain portion of rates and services charges, account holders need to register themselves as eligible. In many cases, account holders are unaware of their eligibility. While they establish whether they are eligible or not, or whether their arrears might be written off or not, the issuing of a clearance certificate is delayed, further delaying the transfer process.

Beyond the time it takes to satisfy the requirements for a clearance certificates, many municipalities also cause delays in the actual granting of the clearance certificates. The press suggests that delays can be as long as three weeks or more.⁴⁰ Municipalities themselves suggest quicker turn-around times:

- In Cape Town, the certificate is issued five working days after the outstanding amounts have been paid.⁴¹
- In Durban, an electronic rates application system recently installed expects to decrease the time involved to a matter of days.⁴²

Other problems also arise after the clearance certificate has been issued, which could impact on a Seller's subsequent credit record with the municipality. In the Nelson Mandela Metro, a bylaw requiring that general rates be charged annually on the first of July, and paid off in twelve monthly installments, has meant that in some cases, a previous property owner continues to receive rates accounts for as long as a year after the sale. From the metro's perspective, a single bill is issued to the property owner on the 1st of July – but split within 12 monthly instalments over the following twelve months. Even if the property is sold on the 1st of August, the responsibility to pay the rates bill continues to rest with the person who was the owner on the date the invoice was issued, the 1st of July.⁴³ This has been confusing to some residents, who have resisted paying the rates account. This has landed them with arrears that undermined a subsequent transaction process.

3.4.3 Tax clearance

Tax clearance became an issue for secondary transactions on the 1st of May 2005. In terms of the new regulations, old transfer duty forms have been replaced with seven new forms, which require information such as the buyer and seller's income tax numbers or alternatively, if not registered for tax, all their sources of income; the date the property was originally acquired by the seller and the initial selling price. Where taxes are found owing or any tax returns are outstanding by either the buyer or seller, then the Receiver can stop the transfer until the outstanding amount has been paid or the outstanding returns have been submitted. The regulations also allow for the Receiver to instruct the conveyancer to pay over owed taxes from the proceeds of the sale of a property.⁴⁴

⁴⁰ <http://www.rodneyhayter.com/article.php?article=1937> Article by Keith Wakefield, CEO of Wakefields Unpaid rates, taxes and services can delay transfer (submitted on 10 August 2005)

⁴¹ City Of Cape Town (March 2005) Integrated Transfer Clearances Manual

⁴² As reported by Keith Wakefield, <http://www.rodneyhayter.com/article.php?article=1937>

⁴³ Eastern Province Herald 7/8/2005: Property sellers stuck with rates debt.

⁴⁴ As reported by Keith Wakefield, CEO of Wakefields.

Of course, practice has not yet been established in terms of the new tax regulations. However, if the Receiver interprets the regulations as requiring him to scrutinize every property transaction, there could be backlogs and delays in completing property deals. In an article by Pam Golding on the subject, the Receiver is quoted as saying: “Every sale of property is subject to an investigation on all taxes.” Apparently this has always been the case. However, the article also quotes Smith Tabata Buchanan Boyes as saying “it is not overly dramatic to say that the new transfer duty forms are not merely new forms; they represent a change in SA tax collection philosophy, a new transfer dispensation, and a new way of administering conveyancing procedures. SARS’ change of tactics affects taxpayers generally, conveyancers and estate agents specifically – and even the economy at large is bound to reflect the impact of these changes.”⁴⁵

Once the Receiver is happy with the tax status of both the Buyer and the Seller, a tax clearance certificate will be issued. This additional step is likely to create significant delays in the transfer process as Buyers and Sellers are forced to become tax compliant as part of their residential property transaction.

3.5 Drawing up transfer documents / deed

Drawing up the transfer and deed documents depends heavily on the activities of conveyancers – the transferring attorney, bond attorney, and where applicable bond cancellation attorney. A risk analysis is summarised in the table below, and explored in more detail in the sections that follow.

As illustrated in table 2, risks involved in drawing up the transfer and deed documents are largely commercial, leading to delays and at worst, a failure of the transaction. Most significant in terms of process flow, is the assembly of documents, because it is at this point that they must finally be compiled and ready for submission to the deeds registry. While the remainder are generally not critical path risks (they can be largely overcome), they do cause delays in the process. Participants are forced to absorb these risks, or to avoid the market altogether.

⁴⁵ From http://www.pamgolding.co.za/pamgoldingpubs/research_article.aspx?id=37

Table 12 Risk analysis for step 5: drawing up transfer documents / deed⁴⁶

Who Involved	Requirements	Time (benchmark)	RISK ANALYSIS					
			Potential risks / impediments	T / S / C	Affecting whom	Impact	1 / 2 / 3	Response
- Transferring attorney - Buyer - Seller	Conveyancer draws up transfer deed Assembles all documents Seller and Buyer sign transfer documents at TA office. Buyer pays for deeds office levy and transfer duty. Buyer pays costs to TA	2 week	- Conveyancer difficult to find - Conveyancer over-subscribed - Seller/ buyer misunderstand the process - Necessary documents are unavailable - Buyer hasn't accessed finance and can't afford transfer costs	C C C C S C	Seller / buyer Seller/ buyer/ EA Seller/ buyer/ EA Seller/ Buyer/ EA	Delays Delays Delays Delays Deal fails	3 3 3 2 2	Avoid/ absorb Avoid/ absorb Avoid/ absorb Avoid/ absorb Avoid/ absorb/ resolve (instalment sale arrangement)

3.5.1 The conveyancer

The conveyancer is the attorney that takes responsibility for conveying the sale to the deeds registry. This involves accessing the necessary documentation, canceling whatever existing arrangements apply, and submitting everything to the deeds registry, all within the framework of the relevant legislation. While the Seller is entitled to appoint the conveyancer, in practice it is often the Estate Agent who makes the recommendation, having a network that includes such professionals. When an Estate Agent is not involved in the sales transaction process, the Seller must find the conveyancer themselves – not always an easy process in low cost housing areas.

Up to three different conveyancers might participate in the transaction process:

- The transfer attorney is responsible for the transfer of title from the Seller to the Buyer
- The bond attorney is responsible for registering the Buyer's mortgage bond against the title

⁴⁶ T = technical risk; S = statutory risk; C = commercial risk; Rank: 1 = critical path risk; 2 = high risk; 3 = medium risk.

- The cancellation attorney is responsible for canceling the Seller’s mortgage bond on the title

Problems and delays can arise when the three roles are played by three different conveyancing firms, so in most cases, one or two attorneys undertake the conveyancing activities in respect of a transaction.

Because the conveyancer is so central to the transaction process, their capacity to perform efficiently and effectively is critical and of interest to many players. There has been some real criticism leveled against the conveyancing industry in this regard. In the then Minister’s budget speech to parliament in 2002⁴⁷, Sankie Mthembu-Mahanyele argued that with respect to the transfer of subsidized properties, conveyancers were “not diligent” in ensuring timeous transfers, and that some conveyancers lacked the capacity to deal with intricate conveyancing process within appropriate legal frameworks, such as the Development Facilitation Act. Anecdotally, some estate agents claim that conveyancers take especially long with lower cost properties. As with Estate Agency commissions, conveyancing fees are tied to the cost of the property. Lower cost properties are delegated to a junior clerk in the conveyancing firm who may be inexperienced, or overloaded with files, both of which result in delays.⁴⁸

The conveyancing industry has also been investigated for bad practice. In 2004, the Estate Agency Affairs Board set up a task team together with the Association of Law Societies, to address collusion between estate agents and conveyancers which was resulting in higher conveyancing fees.⁴⁹

These problems are exacerbated when the client (the Seller or the Buyer) is inexperienced in the property transaction process and relies solely on the advice of the conveyancing attorney and / or Estate Agent.

3.5.2 *Assembly of documents*

While the assembly of documents is an activity that must occur at each and every step of the transaction process, it is at this step that failure to assemble what is necessary becomes critical. Documents are required from both the Seller and the Buyer.

Table 13 Documentation required in the transfer process

Documents required from the Seller	Documents required from the Buyer
Title deed	Identity documents
Approved plans for the property	Marriage and/ or divorce certificates (if applicable)
Rates & Services clearance certificates	Salary slip
Electrical compliance certificate	Credit assessment information

⁴⁷ <http://www.info.gov.za/speeches/2002/02051710461002.htm> . Budget Speech By Housing Minister Sankie Mthembu-Mahanyele to the NCOP, 16 May 2002

⁴⁸ Comments made at the private sector workshop, September 2005.

⁴⁹ http://www.cyberprop.com/cyber1_26112004_8.shp. Article by Chris Nthite

Documents required from the Seller	Documents required from the Buyer
Tax clearance certificate	Tax clearance certificate
Identity documents	
Marriage and /or divorce certificates (if applicable)	

Accessing these documents is not always straightforward. Title deeds, as set out in Section xxx above, might have been lost, or might rest with another individual. If this issue is not resolved by this step in the process, the transfer will not be possible. Approved plans for the property, as set out in section 3.2 above, are often a requirement of the Buyer. Municipal delays in approving plans could undermine this step of the transfer process. Clearance certificates from the municipality and SARS also take time to access.

If either the Buyer or Seller lack valid identity documents, or if they have lost documentation concerning their marriage or divorce, this also takes time to rectify. Couples married in or out of community of property have their status lodged at the Deeds Office. If they do not have a copy of the documentation this must be accessed, for a fee, from the Deeds Office before the transfer can go ahead.

In an article published in the Cape Argus recently, it was noted that *"People often forget to advise their estate agents or conveyancing attorneys of any changes to their marital status or to provide them with copies of their identity documents, marital contracts and certificates and divorce orders. Yet marital status is a critical aspect of the title deed and bond."*⁵⁰

3.6 Lodging at deeds office

The penultimate step in the transfer process is when the sale is lodged at the deeds office and the actual transfer of the property from the Seller to the Buyer occurs. This process continues to depend on the conveyancers involved, while also being heavily influenced by the Deeds Office itself and its capacity to manage the transaction. A risk analysis is summarised in the table below, and explored in more detail in the sections that follow.

The primary risk in this step is that the transfer process will be delayed, either as a result of incomplete documentation or errors in the deeds documentation which the Deeds Office sends back to the conveyancer for rectification, or due to internal backlogs and delays within the Deeds Office itself. A further delay could be as a result of the Buyer having insufficient funds to cover the balance of the purchase price, transfer and bond costs. The consequence of increased delays at this stage is greater for the Seller, who must remain responsible for the property and any risk of damage that might exist. It is also a risk for the Estate Agent who must wait for the commission to be paid out.

⁵⁰ Documentation snags increase deeds office delays. This article was originally published on page 6 of [The Cape Argus](#) on 3 September 2005.

Table 14 Risk analysis for step 6: lodging at deeds office⁵¹

Who Involved	Requirements	Time (benchmark)	RISK ANALYSIS					
			Potential risks / impediments	TS C	Affecting whom	Impact	123	Response
- Transferring attorney	TA, Bond	2 weeks	Errors in the documentation	C	Seller/EA/Buyer	Delays	2	Avoid/absorb
- Bond registration attorney	Conveyancer and Bond Cancellation		Backlog at the deeds office	S	Seller/EA/Buyer	Delays	1	Avoid/absorb
- Bond cancellation attorney	Attorney ensure that all documentation is in order and complete.		Buyer hasn't paid	C	Seller/EA/Buyer	Delays	2	Avoid/absorb
- Deeds Office	They liaise and all lodge their documents with the Deeds Office on the same day. Deeds office levy and transfer duty fees are paid on behalf of Buyer Deeds office receive all documents which go to the examiner. If in order they are placed on prep The draft deed is checked and if there are any queries they are referred to the TA. If rejected the document will have to be relogged. If accepted the deed is registered.		outstanding balance on purchase price and transfer costs		Seller / EA			Avoid/absorb

3.6.1 The Deeds Office

MortgageSA estimates that it usually takes approximately 2 - 3 weeks for the Deeds Registry to check the Bond and Transfer documents before they are ready for Registration. The entire registration and transfer of the bond is estimated to take at least twelve weeks⁵² although the benchmark suggests four to six weeks.

Some suggest that delays in the deeds office are as a result of outdated equipment and under-skilled staff. While the paper-based system in the deeds office remains in place,

⁵¹ T = technical risk; S = statutory risk; C = commercial risk; Rank: 1 = critical path risk; 2 = high risk; 3 = medium risk.

⁵² From MortgageSA website: http://www.mortgagesa.com/legalservices/conveyancing_process.asp

industry experts expect the problem will not be resolved.⁵³ Managing Director of MortgageSA, Saul Geffen suggests delays relate to pressures being put on the deeds registry as a result of the increased churn due to the property boom. In addition, new tax and FICA requirements have placed excessive pressure on the Deeds Office and conveyancing attorneys.⁵⁴

3.6.2 Outstanding payments

It is within this step that the payment of outstanding funds – the balance of the purchase price, transfer and bond costs, and whatever other fees apply – becomes critical and failure on the part of the Buyer can undermine the transfer.

If the Buyer is not able to make the funds available the Seller's conveyancer can delay the registration for three to four days. A longer delay, however, will result in the deeds being rejected, and they will need to be re-lodged. MortgageSA reports that the Buyer may then be put to terms and given 7 days written notice to rectify his default. ⁵⁵

3.7 Taking occupation

This final step in the transfer process is primarily relevant to the Buyer, though the Estate Agent and conveyancer also participate. It involves two sub-steps: the delivery of the registered deed and the final payment of the parties; and the actual occupation of the purchased property by the Buyer. A risk analysis is summarised in the table below, and explored in more detail in the sections that follow.

The primary risk in this step arises when the property is in possession (PIP), and the previous (now foreclosed) owner, or his community, resists eviction. As the risk for the actual property transfers from the Seller to the Buyer, the Buyer incurs the costs associated with resistance to eviction – damage to the property and / or violence. Uncertainty about whether this risk will materialize will limit the engagement of potential Buyers, and depress the purchase price that can be achieved. Too many such sales in any particular neighbourhood can have a generally depressing impact on all property prices, irrespective of the nature of those transactions. Another risk, not necessarily impacting on this transaction process but potentially undermining future sales, is the delivery of the title deed. These risks are explored below.

⁵³ From Rodney Hayter website: <http://www.rodneyhater.com>

⁵⁴ As quoted in <http://iafrica.com/property/features/488921.htm>. DIY developing? Think Again. By Robyn Creer, Monday 19 September 2005

⁵⁵ From MortgageSA website: http://www.mortgagesa.com/legalservices/conveyancing_process.asp

Table 15 Risk analysis for step 7: taking occupation⁵⁶

			RISK ANALYSIS					
Who Involved	Requirements	Time (benchmark)	Potential risks / impediments	T S C	Affecting whom	Impact	1 2 3	Response
Transferring attorney	Once registered the TA arranges for all payments to be made to the Estate Agent/Developer, Seller, Financial Institution		Delays in delivery of registered deed	S	Buyer	Uncertainty; inability to resell quickly	3	Avoid / absorb
Buyer	Property is vacant and in good condition Municipality issues new rates and services accounts	Immediate	Property has been vandalized Previous occupant (tenant / PIP) refuses to vacate Community resistance to new owner Municipality does not issue accounts Poor local management by the municipality	T P P S S	Buyer Buyer/EA Buyer/EA Buyer Buyer	Increased costs to repair Delays / incr. costs/ violence Delays/ incr. costs/ violence Uncertainty Negative equity	2 1 1 1 3	Avoid/absorb/ provide Avoid/absorb/ provide Avoid/absorb/ provide Provide Absorb/ provide

3.7.1 Delivery of the title deed

MortgageSA reports that title deeds become available after about two months from the time of registration.⁵⁷ This is substantiated by various press reports, although it is slower than the Deeds Registry would like to say is normal. The existence of delays is further supported by the TRPM research (Shisaka, 2004) which found that a significant proportion of its household survey respondents in state subsidized stock still had not received their actual title deed, although they had been living in their homes for over five years.

In Pietermaritzburg, it is reported that it takes between 10 to 12 weeks for the Deeds Office to micro-film and release title deeds back to the conveyancers, once a transaction has been registered. This means that if a property is sold again quickly, or if an owner

⁵⁶ T = technical risk; S = statutory risk; C = commercial risk; Rank: 1 = critical path risk; 2 = high risk; 3 = medium risk.

⁵⁷ From MortgageSA website: http://www.mortgagesa.com/legalservices/conveyancing_process.asp

takes out a second bond over his property and subsequently sells it, it can cause a delay of two to three months to register such transfer. The same applies to transfers in developments where the sectional title register has been opened – further transfers can only be registered once the deed has been released from the Deeds Office.

In a letter from the Acting Registrar of Deeds at the Johannesburg Deeds Registry, Advocate A F Gwangwa, to the chairperson of the Johannesburg Attorneys Association Sophia de Klerk on 15 November 2004, it was noted that the process of issuing a deed, from execution to the delivery of registered deeds was being delayed by about 8-9 weeks. While the Acting Registrar suggested the process should take between 3-4 weeks, actual performance saw registered deeds being delivered only 12 weeks after lodgement. Reasons for this delay related primarily to poor and out-of-date equipment. The Acting Registrar reported that digital scanning equipment was being purchased to resolve the delay.

Anecdotally, the approach the Deeds Office takes to errors in the deeds documentation is also a cause of delays. The Deeds Office apparently has a policy to return documents on identification of the first error. If there are subsequent errors in the documentation and these are not found by the conveyancer when rectifying the first, identified error, the documentation will be sent back a second time, and third and so on. Practitioners argue that if the Deeds Office had a more developmental approach, identifying all errors the first time, the process would be accelerated.⁵⁸

3.7.2 Occupation

Occupation is the right to physically occupy the property. This coincides with the transfer of the property in the deeds registry – but does not need to wait for the actual title deed to be delivered.

In terms of the sale agreement, the Seller is bound to hand over the property to the Buyer in substantially the same condition as it was at the date of sale. This means that the Seller is responsible for any damage to property until occupation. Once the Buyer takes occupation, risk for the property passes on to him. The Buyer is then liable to insure the property and maintain it in good order.

Key risks arise especially in properties that have been repossessed by the financial institution and sold in a sale in execution to the new buyer. Estate agents and other practitioners report of former owners who have refused to move, or who have intentionally damaged the property in protest over their eviction. The problem has existed for some time – it was in response to the inability to repossess and the growing number of Properties in Possession (PIPs) on banks' books that Servcon Housing Solutions was established in 1995. Over the course of its tenure, Servcon had a portfolio of about 33 000 properties in low-income areas. To date, 21 000 of these were returned to the banks by selling the properties back to the former owners, rescheduling the loan or

⁵⁸ Comments made during the private sector workshop, September 2005.

getting vacant possession by occupants voluntarily vacating, right-sizing or evicting uncooperative occupants. A further 4000 properties agreed to the Servcon right-sizing programme where by they vacated their home in exchange for an RDP house. However, 12 000 properties in Servcon’s portfolio remain outstanding, with occupants refusing to move.⁵⁹ In press reports, Servcon identified six “hot spots” where it was unable to get due process of law: Khayelitsha in Western Cape, Evaton North in the Vaal area, Protea Glen in Soweto, Ennerdale in southern Johannesburg, Tembisa on the East Rand, and a section of Motherwell, outside Port Elizabeth.⁶⁰

Only properties registered as PIPs before August 1998 are included in the Servcon Programme. Since then, PIPs have been sold by banks in a sale in execution, often to companies established especially to realize this market opportunity. Properties are sold just to recover costs outstanding – and so often at a significantly reduced price. When the Buyer is a company intending to on-sell the property, eviction responsibilities are perhaps more manageable – systems are in place to deal with this – than for individuals facing the problem. However, one estate agent argued that significant risks existed even at the commercial level, as one of his agents was beaten up by an occupant resisting eviction. When occupants resist eviction, it is usually because they have been assured community protection for their stance, and often because of their political affiliation. Practitioners note it is always easier to evict after elections rather than just before. The risk also translates into an increased cost: an estate agent noted that the company he accesses PIPs from to on-sell to individual buyers had increased the prices on all their properties by a blanket 30% to cover the additional costs of evictions.⁶¹

Practitioners argue that a significant stumbling block in the evictions process is the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (PIE). This Act has been interpreted to require that alternative accommodation be considered as part of an eviction process so that the individual’s constitutional “right to access to adequate housing” is not denied.⁶² While the Housing Department has confirmed that this is a misinterpretation of the Act, and while legislation is pending promulgation that will address the anomaly, the current legislation with its current interpretations remains in place.

Legally, it takes 180 days to remove an individual.⁶³ Eviction is not only an issue causing delays, however. It is also costly. Given the risks involved, it is likely that Buyers will tread carefully in respect of purchasing properties sold in execution, or in areas where resistance to eviction is likely. This also deflates property prices even further, undermining the transaction process by thinning the market and decreasing value.

⁵⁹ Reported by Mike van Rooyen, Servcon, at the Private Sector Workshop, September 2005.

⁶⁰ http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=ct20020817215216333H252538. Low-cost homes leave banks R1bn in the red, by Caroline Hooper-Box. Published on 17 August 2002.

⁶¹ Comments made at the Private Sector workshop, September 2005.

⁶² As explained in a summary of the judgement, “Jaftha v Schoeman and Others” on <http://www.lrc.org.za/judgements>

⁶³ As reported at the Public Sector workshop, September 2005.

4 Conclusion and Recommendations

The various steps involved in the residential resale market all involve key technical, statutory and commercial risks. In a normal market, increased risks are balanced with a corresponding increase in return. In this market, however, the relationship is in many instances opposite, with high risks existing alongside comparatively low returns. And yet, the potential of the market (a) if the risks were determined manageable, (b) given its sheer size and, (c) given the clear need, is real. While the reality of the Financial Sector Charter commitments in respect of access to housing finance for moderate income households, enhances this potential considerably, it will not on its own turn the sub-R200 000 housing market around.

The risks set out in the foregoing section result in various impacts and give rise to various responses. Delays were identified as the most common impact; and the most common response is to avoid the market altogether. These are explored below.

4.1 Delays

Across the various risks set out in the foregoing section, the most common impact was that of delays and uncertainty. Given the market dynamics that undermine the ability to provide financially for certain risks, the impact of delays becomes even more significant.

The transfer process, irrespective of house price, can be fraught with delays, and each individual transfer gives rise to a range of individual circumstances that delay the process. According to Lizelle Killbourne, a conveyancer who has undertaken extensive research in this area, a typical transfer, from the date at which the sale agreement is signed (step 2) to the date the deed is transferred (step 6) should take between 60 and 70 days. Her analysis of a sample of over 2.8 million transfers registered in eight deeds registries between January 1994 until October 2001 (and involving properties of all values), revealed the following:

Table 16 Average and median duration of transfers (typical and atypical)

	Number of transfers	Average duration (mean)*	Median of duration **
Freehold	2 420 595 (84.1%)	334.29 days	119 days
Sectional title	457 981 (15.9%)	152.25 days	97 days
Total	2 878 576 (100%)	305.32 days	115 days

* This refers to the middle value in the range from shortest to longest duration.

** This indicates the value that occurs most frequently in a collection of data.

When she removed from the 2.8 million sample of transfers, any transfers that took longer than 180 days (assuming that these were atypical transfers – that is, instalment sales and ‘off-plan’ sales in developments where the time between date of sale and actual transfer can span several years), just under 2 million transfers remained. This sample of typical transfers revealed the following:

Table 17 Average and median duration of typical transfers (i.e. those less than 180 days)

	Number of transfers	Average duration (mean)*	Median of duration **
Freehold	1 603 448 (81.4%)	90.47 days	86 days
Sectional title	366 302 (18.6%)	88.77 days	84 days
Total	1 969 750 (100%)	90.15 days	85 days

* This refers to the middle value in the range from shortest to longest duration.

** This indicates the value that occurs most frequently in a collection of data.

The majority of typical transfers took 85 days – that is, two weeks longer than the 70 day benchmark. The average duration of transfer was longer: 90 days for freehold and just under 89 days for sectional title. Killbourne also found that:

- Only 10.01% of transfers took place between the benchmark figures of 61 and 70 days
- Only 35.28% of typical transfers were registered within a period of 70 days or less
- Only 54.45% of typical transfers were registered within a period of 90 days or less
- The remainder, 45.65% of typical transfers, was registered within a period of longer than 90 days.
- Sectional title transfers generally took about 1.7 days less than freehold transfers.
- The shortest overall average duration was achieved by the Kimberley deeds registry (81.61 days for all transfers (typical and atypical).
- The longest overall average duration was recorded at the Pietermaritzburg deeds registry (93.21 days for all transfers (typical and atypical).

Critically, while Killbourne didn’t find a correlation between volumes registered and the average duration achieved by a deeds registry, **a correlation between the price category of a property and the duration of transfer did exist: “the higher the price, the shorter the duration of transfer”**.

Killbourne’s definition of a “typical transfer” provides some insight into why this might be true. Killbourne established a typical transfer to be one where “most of the following characteristics were present: the property was residential, was sold through an estate agent; a new bond and cancellation of the existing bond were to be registered simultaneously with the transfer; the ‘bond due’ date and ‘guarantees due’ date did not exceed 60 days from date of sale, and there were no obvious factors which could delay

the transfer.” Given the analysis above, lower cost properties have less of these characteristics than higher cost properties.

Finally, Killbourne found that 16 of the 50 steps she identified in the transfer process were on the critical path where a delay would undermine subsequent steps until it was resolved. She argued that a delay in any one of the 16 activities would automatically delay the entire transfer.

MortgageSA, a South African mortgage originator, has identified the following factors which could delay the registration of a bond or transfer⁶⁴

- Failure by the seller and/or buyer to provide information (steps 1-7)
- Failure by the seller to provide details of the bank holding the existing bond (steps 4-6)
- The existing bondholder delaying/not providing cancellation figures and Title Deeds to the transferring attorney (step 4)
- Delay in receiving rates figures (municipality) and/or clearance certificate (step 4)
- Failure by the buyer to pay a deposit (if required) (step 2)
- Delay in the provision of guarantees (step 5)
- Failure by the buyer to pay bond and transfer costs on time (step 5)
- Delay by the seller in signing the transfer documents (step 5)
- Delay by the buyer in obtaining government capital subsidy approval/employee subsidy documents for new bondholders and failure to comply with other requirements of the bank (steps 3-5)
- Delay by the buyer in signing the transfer and/or bond documents (step 5)
- When the Bond Attorney, Transferring Attorney and Cancellation Attorney are three separate firms (steps 5 and 6)

Clearly, dealing with the various delays in each step of the process would have a notably positive impact on the residential resale market in the sub-R200 000 bond category. Shisaka (2004) argues that a significant contributor to these delays is the absence of service providers in the affordable housing market – for reasons outlined in the sections

⁶⁴ From MortgageSA website: http://www.mortgagesa.com/legalservices/conveyancing_process.asp

above. At the same time, service providers such as estate agents and mortgage originators that currently operate in the upper income segments of the market would need to change their methodologies considerably in order to offer services that would be relevant to the affordable market. These issues are explored briefly in the recommendations section.

4.2 Avoiders and absorbers

It is not possible to price for risk in the residential resale market. In fact, the relationship is opposite – where risks are higher for the Seller, property prices are generally lower. This leaves the Seller and the Estate Agent with two options. Either they avoid the market altogether, or they absorb the costs as a normal part of how that market operates. This situation creates an unnatural market environment in which lower prices do not necessarily lead to increased demand. It is entirely possible that even with the introduction of mortgage finance targeted at the affordable market, there will not be a significant increase in the level of churn among properties in this market segment, given all the other constraints and risks identified. In this regard (and as explored in section 3.1.1 above), the motivations for Buyers and Sellers to participate in the residential resale market are rarely opportunistic and more often responsive to context. Sellers sell because they have to; Buyers buy because there is nothing else.

Buyers and Sellers become passive participants within this market. This market inertia was identified by Shisaka (2004) when the TRPM research noted exceptionally low levels of market churn. Homeowners in the TRPM survey identified their homes as permanent, emphasizing the shelter aspect of their asset. Very few identified with the financial asset value of property that would be acknowledged in a normal, functioning market.

This issue of passivity was also raised in the Private Sector Workshop. Participants argued that Buyers and Sellers needed to be “re-educated”, and that a “paradigm shift” was necessary, and that from a cultural and historical perspective, the stagnancy of the former township market, at least, was understandable. Participants agreed that property education was critically needed if a “fair” market was to be established in which the normal assumptions of willing buyer and willing seller, and the relationship between demand and supply, operated effectively.

Of course, and as noted above, if market facilitators (either in the form of estate agents or some other service provider) existed, and if such facilitators were somehow incentivised to act in the interests of their clients (Buyer or Seller) rather than in the interests of a commission tied to property price, the market would become more proactive. One participant in the private sector workshop argued the need for a “market creator” – someone or some institution that could demonstrate to the buying and selling public that property did have financial value and that it was a worthwhile investment beyond the shelter it provided.

It is in this regard that the inner city market operates quite differently. Here, anecdotal evidence suggests that the increasing level of churn (among properties of the same value) is as a result of investment, and not of residential pursuit. It could be argued that investors have better access to the kinds of facilitative support (estate agents, conveyancers, mortgage originators, etc.) that are required in order to recognise and maximise opportunities when they arise. Household seeking their home have generally less access to such support. This creates an interesting question, certainly for policy makers. Inner city accommodation is extremely well located – and its sale to lower income households would contribute significantly to the state’s intentions for socio-economic integration. Purchase of such accommodation, therefore, could be seen as a form of downward raiding that will ultimately, as property prices rise, lead to the exclusion, again, of lower income households from the City. On the other hand, when investment leads to increased property values, the City benefits from an improved rates base.

4.3 Recommendations

The residential resale market, especially in the sub-R200 000 house price category, is not an easy one. Although stock is limited, prices are not correspondingly high. Buyers and Sellers appear to participate only under pressure – some personal situation that makes any other option impossible. There are very few facilitators or “market creators”, and delays which hamper the transfer process across all properties appear to be more significant in lower value properties.

This section considers the various risks set out in Section 3, and identifies possible areas for intervention. In some ways, as noted by Shisaka (2004), the system is so inter-dependent that all recommendations must be pursued at once if any one intervention is to

have the desired effect. The introduction of mortgage finance targeted specifically at the sub-R200 000 market will no doubt create some stimulus to easing the transaction process. However, without addressing the other risks, this will not prove to be sufficient to making the residential resale market work.

The risks identified in this report are relevant in respect of all properties in the residential resale market. However, as noted by Killbourne, risks are more often realised in the transfer of lower cost properties than among the high-end property market. To this end, if policy makers, seeking to maximise the opportunities of the FSC, wish to stimulate the sub-R200 000 property resale market, this should be an explicit target for their interventions.

4.3.1 Identify property for sale / identify buyer

The first risk in this step related to the relative thinness of the resale market and the general unwillingness of existing property owners to sell. This is a function of market performance and the limited availability of stock. As property transactions begin to reflect an increasing value, it is likely that more property owners currently ambivalent about whether they should enter the market and sell their home will decide to do so, and this will slowly build up the market churn towards what exists in a 'normal' market. Although the TRPM study found that only 33% of property owners in the 'privately developed sub-market' were willing to sell their homes, this is already a significant number more than are actually doing so. There is clearly opportunity for increased churn within a market of generally unwilling Sellers.

Access to information, traditionally via estate agents, will however be critical in facilitating this shift. In this regard, key problems with the way in which the estate agency industry is structured have been identified. Critically, attention should be given to the commission structure, which creates a disincentive for estate agents to market lower cost properties when higher cost properties are also demanding their services. Incentives for estate agents to operate in under-served areas need to be developed, also given the racial imbalance in opportunity for estate agents.

The pending Property Charter⁶⁵, currently the subject of deliberations within the Department of Trade and Industry, offers an ideal opportunity in this regard that has to date not been realised. Critics of the draft Charter have noted that it is focused almost entirely on the commercial property sector, and that the residential property sector is barely addressed (indeed, there is no explicit reference to the residential sector in the draft charter). Further:

- Reference to estate agents relates specifically to the proportion of black estate agents in the industry: Section 5.3 requires that the sector commit to achieve “30% black practitioners in estate agents” and “15% black women practitioners in estate agents” within five years from the signing of the Charter. Estate agents are neither challenged nor incentivised to engage in lower cost housing areas.
- Reference to conveyancers (included within a broader category of property services enterprises) relates only to procurement preference: Section 7.1 stipulates the achievement of “40% of total procurement spend on property services enterprises with a BBBEE status of Level One to Level Four in five years”.

With residential property comprising the largest asset class world-wide, this undermines the property sector’s capacity to realise broad-based BEE in South Africa, where the historical context in respect of individual ownership has undermined the performance of property as an asset for black, low income earners. If the property sector were to emphasise the potential for the secondary residential property market to contribute towards its BEE goals, it would find an ally in the financial sector, which has made explicit commitments in its charter in respect of access to housing finance for low income earners, and a functioning secondary property market.

The Property Charter does go into some detail regarding the ownership of property enterprises (in which the estate agency sector is included). Here, however, it has been suggested that the trend towards franchising (a major estate agency, for instance, has opened up franchise offices in Khayelitsha and elsewhere) could do less for integrating the sector and equalising access to opportunity than it does for point scoring in terms of Charter targets.

One other area where the Property Charter is silent is in respect of advertising. The definition of “property services enterprises” includes facilities management, property management, asset management, valuers, conveyancers, and other professional service providers; but makes no explicit mention of advertisers. While it is not cost effective for agents marketing lower cost houses to invest in advertising, advertising space could be provided on a point-scoring basis by publishing houses engaged in property advertising.

⁶⁵ The current draft of the Property Sector Transformation Charter (Draft 4: 290705.doc) is available on <http://www.sapoa.org.za/downloads/SW-prop%20charter%20draft%204.zip>.

Alternatively, the banks could, in seeking to enhance FSC-linked lending opportunities in the residential resale market, enter into partnerships with one or more publishing houses to publish market-specific housing for sale – an FSC-market housing insert is something that could be developed.

The section above also acknowledged that experience in respect of the “affordable” market was limited. Section 6 of the Property Charter focuses explicitly on skills development. A percentage of the opportunities suggested in this section should be directed at educating property professionals about the specifics of the ‘affordable’ market, and providing targeted skills development interventions that would make especially estate agents and conveyancers more efficient when working with sub-R200 000 properties. In this regard, the intentions of the Estate Agency Affairs Board to revise the training and Board examinations to be more relevant to the diversity of property transactions that an agent might face are encouraging.⁶⁶

4.3.2 Sign sales agreement

The risks associated with this step relate largely to the quality of the house and the ability of the Seller to provide the necessary documentation to the Buyer. In this regard, statutory risks are most significant, though the house itself may be also be a technical risk. Here, a local authority interested in supporting the development of the sub-R200 000 residential resale market could develop a special unit which could provide a variety of support services including:

- Expedited and facilitated approval of additions and alterations, or if necessary, support for rectifying work.
- Free sample plans for extensions or alterations to the sorts of RDP houses included in the municipality, or for new housing built through the peoples’ housing process.
- Easy, library-like access to existing, lodged house plans (including layman-clear indications of building lines, coverage, etc.), site development plans, title deeds.
- Training services for local community draughtsmen.
- A list of professionals (draughtsmen, engineers, electricians, builders, conveyancers, etc.) – the municipality could liaise with NHBRC and other industry bodies in this regard to ensure it recommends only registered professionals. In exchange for free advertising by the municipality, the professionals could offer a discounted rate to consumers referred through the municipality’s office.
- A list of building material suppliers – again, in exchange for free advertising, building material suppliers could offer their municipally-referred clients a discount.
- A waiver or special reduction on the application for extensions to sub-80m² houses.

⁶⁶ Interview with Nomonde Mapetla, CEO Estate Agency Affairs Board.

- Expedited issuing of clearance certificates; support in resolving municipal arrears problems.
- Support in resolving title deed inaccuracies or properties encumbered by a series of informal transactions which leave the title deed with a former ‘owner’.
- Support (expedited process) in accessing the necessary documentation for the transfer process: ID documents, marriage certificates, etc.

It would be important for the special unit to be both responsive to existing and emerging demands for service, and proactive in encouraging residents to undertake alterations and building work within legal parameters from the onset. This would involve a level of advertising, which could also serve to build positive relations between the municipality and the local community.

4.3.3 Bond application

Risks relating to the bond application process are largely commercial and relate to the affordability of the borrower (Buyer) and how the property is valued by the lender. A number of the issues will be addressed either by the pending National Credit Bill, or by the targets set out in terms of the Financial Sector Charter. The issue of property valuation is, however, quite a stumbling block, especially in areas where the property market is dysfunctional. Here, it may be strategic for banks to adopt a subtly different valuation method that encourages increasing property values in the short term, as an explicit intervention to secure a better functioning residential resale market in the longer term. One option might be for lenders to consider the potential productive value of a property – much in the same way valuations for Property Unit Trusts are done, that is, a calculation of potential monthly yield if the property was rented – and to use this together with the collateral value in determining overall value.

Another way to enforce value as separate from bond amount, could be for lenders to limit their loans to 80% of total value, rather than the 100% loans they do extend. In this way, a R180 000 loan would be applicable to a house of R225 000. It is important for bond amounts to be de-linked from property values to enable the market to express itself beyond banks’ appetite to lend.

4.3.4 Fulfilling pre-transfer requirements

The critical risk in respect of this step relates to the status of the existing title deed. As noted in section 3.4, in many cases the Seller does not actually have the title deed. The title deed may be a number of informal transactions away from the current ‘owner’; the ‘owner’ may have inherited the property from family without a formal transfer process; delays in the Deeds Registry may have meant that the actual title deed has not yet been delivered to the ‘owner’ now wishing to sell, and so on.

Representatives from the Department of Land Affairs suggest there is really only one way to resolve title deed inaccuracies and inconsistencies, many of which arose in the apartheid era. A township-by-township audit is proposed. For instance, a municipality may decide to pilot residential resale market support interventions in a particular local area. This municipality would then establish a special unit which would undertake a house-by-house survey, confirming that the title deed in the Deeds Registry corresponds with the perceived tenure in the actual house. Where it does not, the unit would have special powers to resolve the problems and formalise the deemed owner's tenure arrangements.

Of course, the beneficiaries of such an intervention (which deals with one of the critical path steps in the transfer process) would not be limited to Sellers and the municipality itself, but would also include financial institutions wishing to see increased churn so that they could meet their FSC commitments. To this end, the public sector workshop recommended that banks enter into some sort of partnership arrangement with specific municipalities to undertake local deed audits.

The problems relating to clearance certificates are generally dependent on and subservient to title deeds: if the title deed is not current, it is likely that the services payments situation is also in default. Further, clearance certificates cannot be resolved until the title deed situation is resolved. The City of Joburg argues that because properties are not trading in its townships, clearance certificates are not an issue. In inner city areas, where properties are trading, clearance certificates become more significant a stumbling block to the transaction process. Overall, greater efficiency on the part of municipalities to address delays in the issuing of clearance certificates would have a positive impact on the ease with which this step is undertaken.

While the impact of the new tax clearance certificate requirements have not yet been reported on, there is widespread speculation that the requirement will cause considerable delays. Much like the municipal special unit aimed at facilitating sub-R200 000 property transactions, SARS could set up a similar office (or dedicate a specific official in each office) to assist would-be Sellers and Buyers resolve their tax affairs. Further, the EAAB should ensure that adequate training, to assist estate agents mediate the potential delays of this requirement, exists.

4.3.5 Drawing up transfer documents / deed and lodging at the deeds office

The risks associated with this step are all commercial, and relate to the efficiency of conveyancers working with lower cost properties. Already, significant work has gone into automating the process. Specific “e-conveyancing” firms have been established which provide lenders, local authorities, the deeds office, etc., with workstream support in ensuring that the transfer process is done efficiently and effectively.

As noted above, the Property Charter offers opportunities to incentives conveyancers to operate in low cost housing areas where fees are lower.

The deeds office is in the process of upgrading its systems so that the delays documented by various observers are overcome. Some systems are also being automated to improve efficiencies even further.

4.3.6 Taking occupation

Delays experienced in issuing the title deed are only significant if the property owner wishes to sell the property. That said, delays of more than five years, as witnessed in the TRPM study (2004) are not acceptable and could seriously undermine sales transactions. It is hoped that efforts by the deeds office to upgrade systems will make a significant difference in this regard.

A critical issue relates to the Prevention of Illegal Eviction and Unlawful Occupation of Land (PIE) Act. Property practitioners argue that this legislation undermines their ability to move properties in possession quickly so that neighbouring property values are not overly influenced. Recommendations to amend this legislation are currently being considered within the Department of Housing and the State Law Advisor.

Further, it is critical that due process of law is indeed addressed. This requires a legal resolution as to whether an eviction is a civil matter between landlord and tenant, or whether the state can intervene and on what basis.

4.3.7 Overall: education issues

While addressing the various risks in the residential resale market, practitioners must also remember that the Sellers and Buyers with whom they are dealing are likely to be in all cases first-time homebuyers, and in most cases, the first generation of their family to purchase a home. Further, access to banking is generally limited among the population that the FSC housing loan product targets. To this end, education, broadly defined, becomes a critical area for attention by all stakeholders.

That said, it is also true that education runs the risk of being both so general that it becomes meaningless, or so detailed that it becomes irrelevant. Careful consideration must go into the kind of mass, consumer education that needs to happen – issues as immediate as how low-moderate income earners access the property market, how they grow value in their home, how they negotiate with estate agents, conveyancers and other players to get the best deal, and so on, should be addressed.

Annexure 1: Participants to the private and public sector workshops, September 2005

Private sector workshop: 2 September 2005

- Alan Judin, SA Internet
- Tracy Ferdinandi, Standard Bank
- Thabo Matsho, Massel Matsho Real Estate
- Rory Kieck, Real People
- Brian Weiss, Real People
- Lehlohonolo Tlali, City Sectional Properties
- Ian Fife, City Sectional Properties
- Maud Mogodi-Kikgetsu, MAP Real Estate
- S Bhoowanpursadh, Standard Bank
- Sandy Ruiters, Standard Bank
- Neville McIntyre, Jigsaw Holdings
- Mike Bester, Realty 1 Elk
- Mike van Rooyen, Servcon Housing Solutions
- Nik Steffny, Lawyers Access Web
- Anton de Leeuw, YDL Property Education
- Jabu Mngomezulu, NAWA
- Nomonde Mapetla, EAAB

Public sector workshop: 5 September 2005

- P S Maluleke, Department of Land Affairs
- Nik Steffney, Lawyers Access Web
- Francis Collins, Servcon Housing Solutions
- Sunday Ogunronbi, Department of Land Affairs
- Tshiwo Yenana, City of Johannesburg, Economic Development Unit
- Li Pernegger, City of Johannesburg, Economic Development Unit
- Sharon Lewis, National Treasury
- (Apologies: Roland Hunter, City of Johannesburg, Revenue)

Annexure 2: Consolidated Risk Analysis of the Residential Resale Market Transaction Process

					RISK ANALYSIS					
	Step	Who Involved	Requirements	Time (benchmark)	Potential risks / impediments	T/S /C	Affecting whom	Impact	1/2 /3	Response
1.	Identify property for sale / identify buyer	<ul style="list-style-type: none"> - Buyer - Seller - Estate agent - Advertisers 	<ul style="list-style-type: none"> - Seller willing to sell – finds estate agent to assist - Buyer finds property – can choose from selection - Estate agent can realise reasonable commission - Advertisers exist 	Dependent on availability of estate agents & advertisers – takes much longer without such support.	<ul style="list-style-type: none"> No estate agent Limited choice of properties High cost of advertising for small firms No advertising Low value properties Auctioned PIP property still has former owner resident – inability to evict 	<ul style="list-style-type: none"> C C C C C CS 	<ul style="list-style-type: none"> Seller / Buyer Buyer / EA Estate agent Seller / Buyer/ EA EA / Seller EA/ seller/ buyer 	<ul style="list-style-type: none"> Uncertainty Uncertainty Increased costs Uncertainty Decreased commission/realizable value Uncertainty/ violence/ increased costs 	<ul style="list-style-type: none"> 1 1 3 2 2 1 	<ul style="list-style-type: none"> Avoid / absorb Avoid / absorb Avoid / absorb / provide Avoid / absorb Avoid / absorb/ resolve (informal sale) Avoid/ absorb
2.	Sign sales agreement	<ul style="list-style-type: none"> - Estate agent, sales administrator or attorneys - Buyer - Seller 	<p>Seller required to provide:</p> <ul style="list-style-type: none"> - Approved plans - Electrical certificate <p>Buyer will be required to provide all or some of the following documents:</p> <ul style="list-style-type: none"> - Identity documents - Marriage certificate - Salary slip <p>A credit check may be undertaken</p> <p>Sales agreement developed and signed by Buyer and seller/developer.</p> <p>Transfer Attorney and Bond Cancellation attorney notified and instructed to undertake the transfer.</p>	1 – 2 days if all doc's are provided. Could take weeks or months if building plans need to be drawn and approved retrospectively, or if electricity installation is sub-standard.	<ul style="list-style-type: none"> Add-ons done without plans Poor electrical systems Slow local authority approval processes Buyer doesn't have documents, and suffers delays in accessing them Buyer has bad credit record Buyer / seller misunderstand agreement Without EA assistance, seller doesn't know a transfer attorney 	<ul style="list-style-type: none"> T T S S C C C 	<ul style="list-style-type: none"> Seller Seller Seller / EA Seller / EA Seller / EA EA / buyer / seller Seller 	<ul style="list-style-type: none"> Increased costs Increased costs Delays Delays Delays Delays / conflict Delays 	<ul style="list-style-type: none"> 3 3 3 3 3 3 2 	<ul style="list-style-type: none"> Avoid / absorb Avoid / absorb Avoid / absorb Avoid / absorb Avoid / absorb Avoid / absorb Avoid / absorb
3.	Bond application	<ul style="list-style-type: none"> - Financial institution (FI) - Buyer - Estate Agent/Developer - Bond conveyancer 	<p>Documents provided as above:</p> <ul style="list-style-type: none"> - Identity documents - Marriage certificate - Credit assessment information - Salary slips <p>FI values property, does structural assessment</p> <p>FI provided copy of the sales agreement</p> <p>FI appoints a Bond Conveyancer to register a new bond. Bond Conveyancer draws up bond documents which Buyer must sign at the Conveyancers offices.</p> <p>Bond Conveyancer issues guarantees and sends to Transferring</p>	1 week – 1 month, depending on familiarity of the bank official with the particular type of transaction, value dynamics of neighbourhood, etc.	<ul style="list-style-type: none"> As above, documentation not collated Redlining / geographical over-exposure Under valuation of property Over valuation of property Buyer / seller confused regarding the process Conveyancer over-subscribed Buyer has a bad credit record. 	<ul style="list-style-type: none"> S C C C C C C 	<ul style="list-style-type: none"> Seller / EA Buyer/ seller/EA Seller/ EA Buyer Buyer/ Seller Buyer/ seller/ EA Buyer/seller/EA 	<ul style="list-style-type: none"> Delays Uncertainty/ failure of sale Uncertainty/ limited profit Over-indebtedness: value Delays Delays Failure of sale 	<ul style="list-style-type: none"> 3 2 1 1 3 3 2 	<ul style="list-style-type: none"> Absorb Absorb / resolve (instalment sale) Avoid / absorb Absorb Absorb Absorb / resolve (instalment sale)

					RISK ANALYSIS					
	Step	Who Involved	Requirements	Time (benchmark)	Potential risks / impediments	T/S /C	Affecting whom	Impact	1/2 /3	Response
			Attorney							
4.	Fulfilling pre-transfer requirements	<ul style="list-style-type: none"> - Estate Agent - Conveyancer [Transferring attorney TA) - Buyer - Seller - Financial Institution - Bond Cancellation Attorney 	<p>TA requires personal information – identity documents, marriage certificate etc</p> <p>TA undertakes deeds search to determine if there are any interdicts on the property.</p> <p>If so the TA informs the relevant parties and provides FI guarantees as required.</p> <p>If there is a bond over the property the TA writes to the FI to inform them that the property has been sold. TA provides FI guarantees for the bond amount owing.</p> <p>FI instructs Bond Attorney to forward the title deed to the TA and to cancel the bond.</p> <p>TA writes to Municipality to obtain rates clearance charges to end of month when transfer will occur. Seller required to provide specified funds which are paid to the Municipality and a Clearance Certificate is issued. Buyer must pay service deposits to the Municipality</p> <p>Buyer signs power of attorney.</p>	4-6 weeks or much longer if title deed not in Seller's hands and rates and services arrears rest with previous owner, not Seller.	<p>As above, documentation not collated</p> <p>Seller doesn't officially own property</p> <p>Problems with title deed: servitude, interdict, bond guarantee, etc.</p> <p>Rates and services accounts outstanding</p> <p>Rates and services accounts contested by seller</p> <p>Rates and services arrears greater than property value</p> <p>Municipality anxious about non-payment – sets high deposit</p> <p>Seller / buyer misunderstand the process</p> <p>Taxes outstanding</p>	S S S C S C C C	Seller / EA Seller/ buyer/ EA Seller/buyer/ EA Seller Seller/ EA/ buyer Seller/ EA/ buyer Buyer Seller/ buyer/ EA Seller/buyer/EA	Delays Delays & uncertainty Delays & uncertainty Delays & increased cost Delays Deal fails Increased costs Delays Delays	3 1 1 1 2 2 3 3 3	Absorb Avoid/ absorb/ resolve (informal sale) Avoid/ absorb Avoid / absorb Avoid/ absorb Avoid/ absorb Avoid/ absorb Avoid/ absorb Avoid/ absorb
5.	Drawing up transfer documents/deed	<ul style="list-style-type: none"> - Transferring attorney - Buyer - Seller 	<p>Conveyancer draws up transfer deed</p> <p>Assembles all documents</p> <p>Seller and Buyer sign transfer documents at TA office.</p> <p>Buyer pays for deeds office levy and transfer duty.</p> <p>Buyer pays costs to TA</p>	2 weeks, although anecdotally longer for lower cost properties	<p>Conveyancer over-subscribed</p> <p>Seller/ buyer misunderstand the process</p> <p>Necessary documents aren't available.</p> <p>Buyer hasn't accessed finance and can't afford transfer costs</p>	C C C/S C	Seller/ buyer/ EA Seller/ buyer/ EA Seller/ Buyer/ EA Seller/ EA	Delays Delays Delays Deal fails	3 3 2 2	Avoid/ absorb Avoid/ absorb Avoid/ absorb/ resolve (instalment sale arrangement) Avoid/ absorb
6.	Lodging at Deeds Office	<ul style="list-style-type: none"> - Transferring attorney - Bond registration attorney - Bond cancellation attorney - Deeds Office 	<p>TA, Bond Conveyancer and Bond Cancellation Attorney ensure that all documentation is in order and complete.</p> <p>They liaise and all lodge their documents with the Deeds Office on the same day.</p> <p>Deeds office levy and transfer duty fees are paid on behalf of Buyer</p>	2-3 weeks, although can be longer given complications	<p>Errors in the documentation</p> <p>Backlog at the deeds office</p> <p>Buyer hasn't paid outstanding balance on purchase price & transfer costs</p>	C S C	Seller/ EA/ Buyer Seller/ EA/ Buyer Seller/ EA/ Buyer	Delays Delays Delays/ deal fails	2 1 1	Avoid/ absorb Avoid/ absorb Avoid/ absorb

					RISK ANALYSIS					
	Step	Who Involved	Requirements	Time (benchmark)	Potential risks / impediments	T/S /C	Affecting whom	Impact	1/2 /3	Response
			Dees office receive all documents which go to the examiner. If in order they are placed on prep The draft deed is checked and if there are any queries they are referred to the TA. If rejected the document will have to be relogged. If accepted the deed is registered.							
7.	Taking occupation	Transferring attorney	Once registered the TA arranges for all payments to be made to the Estate Agent/Developer, Seller, Financial Institution	Payment can be immediate but deeds can be later than five years.	Delays in delivery of registered deed.	S	Buyer	Uncertainty / inability to resell quickly	3	Avoid/ absorb
		Buyer	Property is vacant and in good condition Municipality issues new rates and services accounts	Should be immediate but if previous PIP owner is still there, legal evictions take 180 days.	Property has been vandalized Previous occupant (tenant / PIP) refuses to vacate Community resistance to new owner Municipality does not issue accounts Poor local management by the municipality	T P P S S	Buyer Buyer/ EA Buyer/ EA Buyer Buyer	Increased costs to repair Delays / incr. costs/ violence Delays/ incr. costs/ violence Uncertainty Negative equity	2 1 1 1 3	Avoid/ absorb/ provide Avoid/ absorb/ provide Avoid/ absorb/ provide Provide Absorb/ provide