HOUSING FINANCE SYSTEM

In South Africa

UN-HABITAT

UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME

HOUSING FINANCE SYSTEM IN SOUTH AFRICA

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Principal Editor and Manager:	Xing Quan Zhang
Principal Author:	Vuyisani Moss
English Editor:	Ingrid Uys
Design and Layout:	Anne Musotsi

FOREWORD

At the dawn of this new urban era, UN-HABITAT research shows that by 2030, two-thirds of humanity will be living in towns and cities. We thus live at a time of unprecedented, rapid, irreversible urbanisation. The cities growing fastest are those of the developing world. And the fastest growing neighbourhoods are the slums. Indeed, the global number of slum dwellers is now at or close to the 1 billion mark. Excessive levels of urbanization in relation to the economic growth have resulted in high levels of urban poverty and rapid expansion of unplanned urban settlements and slums, which are characterized by a lack of basic infrastructure and services, overcrowding and substandard housing conditions.

Yet housing and the services that should be provided with it are one of the most basic human needs. It is enshrined in various international instruments, including the Habitat Agenda. And reducing the number of slum dwellers around the world is a cornerstone of the Millennium Development Goals set to fight poverty around the world. So if we fail to achieve the Goals in towns and cities, we will simply fail to achieve them at all.

It was with this crisis in mind that the United Nations General Assembly decided in its resolution of 26 February 2002 to transform United Nations Commission on Human Settlements into a fully pledged programme. The General Assembly in its resolution called on UN-HABITAT to take "urgent steps to ensure a better mobilization of financial resources at all levels, to enhance the implementation of the Habitat Agenda, particularly in developing countries." It also stressed "the commitments of member states to promote broad access to appropriate housing financing, increasing the supply of affordable housing and creating an enabling environment for sustainable development that will attract investment".

The Habitat Agenda recognizes that housing finance systems do not always respond adequately to the different needs of large segments of the population, particularly the vulnerable and disadvantaged groups living in poverty and low income people. It calls UN-HABITAT to assist member states to improve the effectiveness, efficiency and accessibility of the existing housing finance systems and to create and devise innovative housing finance mechanisms and instruments and to promote equal and affordable access to housing finance for all people.

In our quest to reach as many people as possible, a cornerstone of our agency's new Medium-term Strategic and Institutional Plan is partnerships. We have no choice but to catalyze new partnerships between government and the private sector. This is the only way to finance housing and infrastructure at the required scale – the scale needed to stabilize the rate of slum formation, and subsequently reduce and ultimately reverse the number of people living in life-threatening slum conditions.

It is clear that in the coming 20 years, conventional sources of funds will simply be unavailable for investment at the scale required to meet the projected demand for housing and urban infrastructure. Many countries around the world continue to face deficits in public budgets and weak financial sectors. Local governments have started to seek finance in national and global markets, but this is only in its initial phase.

New mortgage providers have emerged, including commercial financial institutions and mortgage companies. But only middle and upper income households have access to such finance, while the poor are generally excluded. Although social housing is becoming less important in Europe and in countries with economies in transition, the need to provide shelter that is affordable to low income households still exists, including in developing countries.

This is why the exchange of information and knowledge on human settlements finance systems is so important. It is why it receives increased recognition in facilitating the development of human settlements finance systems and in turning knowledge into action for developing practical human settlements finance methods and systems for these pressing problems.

Our Human Settlements Finance Systems series documents the state, evolution and trends of human settlements finance in member states, and examines the factors and forces which drive the development of human settlements finance systems and the roles of different institutions and actors in shaping the systems and trends, and reviews human settlements finance systems. It presents an interesting review of policies, instruments, processes and practices. It examines the strengths and weakness of these systems and practices, their relations to the housing sector and the broad economic and social sectors, and lessons learned from practices.

Indeed, the country review studies we present are a valuable resource for member States because it is a body of work that also shows how human settlements finance systems and models can be applied to local use and thus provide a wider range of options for human settlements finance. The series also serves as guidebooks for policy makers, practitioners and researchers who have to grapple daily with human settlements finance systems, policies and strategies.

Dr. Anna Tibaijuka

Under-Secretary-General and

Executive Director

UN-HABITAT, Nairobi, 2008

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LIST OF ABBREVIATIONS

ABSA	Amalgamated Banks of South Africa
BASA	Banking Association of South Africa
BoE	Bank of Executors
CIDA	Canadian International Development Agency
CSIR	Center for Scientific and Industrial Research
EU	European Union
FSB	Financial Services Board
FSC	Financial Sector Charter
GDP	Gross Domestic Product
GEAR	Growth, Employment and Redistribution Strategy
GTZ	German Technical Assistance Corporation
IMF	International Monetary Fund
JHC	Johannesburg Housing Company
LOA	Loan Officers Association
MBS	Mortgage Backed Securities
MFRC	Micro Finance Regulatory Council
MIF	Mortgage Indemnity Fund
MoU	Memorandum of Understanding

NGO	Non Government Organisation
NHBRC	National Home Builders Registration Council
NHF	National Housing Forum
NHFC	National Housing Finance Corporation
NPLs	Non Performing Loans
NURCHA	National Urban Reconstruction and Housing Agency
OBA	Office of the Banking Adjudicator
PHP	Peoples Housing Process
PHPT	Peoples Housing Partnership Trust
PIPs	Properties in Possession
PPP	Public Private Partnership
RDP	Reconstruction and Development Programme
RHLF	Rural Housing Loan Fund
RoU	Record of Understanding
SAHAC	South African Housing Advisory Council
SARB	South African Reserve Bank
SHF	Social Housing Foundation
SHIs	Social Housing Institutions
SPVs	Special Purpose Vehicles
TUHF	Trust for Urban Housing Finance
UN	United Nations
USA	United States of America

USAID	United States Agency for International Development
UUDP	Urban Upgrading and Development Programme
WB	World Bank

CHAPTER ONE

THE SOUTH AFRICAN ECONOMY AND DEMOGRAPHICS

1.1 INTRODUCTION

The scale of the housing problem and the lack of delivery in South Africa is demonstrated by the demand for affordable housing and by the number of people living in slums and informal housing conditions. The crisis is further compounded by the unwillingness of traditional lenders to make loans to low-income earners for housing. On the demand side, the government prides itself on its impressive record of delivery of more than I.8 million houses since 1994. The backlog, however, is monumental as is the number of people underhoused or un-housed has grown rapidly from 2.4 million to 3 million households[1]. The scale of the demand for housing led government to hastily investigate alternatives to deal with the Reconstruction and Development Programme's promise of better living conditions and standards for the majority of South Africans.

The fact that a staggering 16 million people (36%) have no access to hygienic sanitation, and 3.5 million people have no access to safe drinking water, is astounding[2]. The irony is that government's success in fast tracking the delivery of basic services to as many poor communities as possible is causing local governments to buckle under the pressure. Though there is a shortage of housing stock for middle-income earners, the poorest segment of the population has benefited the most from the government subsidy programme. Households in the low-income bracket have been the primary beneficiaries of government capital subsidy programme's with more than 1.8 million houses built between 1994 to March 2005.

The government plans to build more houses by 12% from the current average of 200 000 units per year in an intensive effort to free the nation of slums areas[3]. The aim is not only to increase the con-

1 Please see annexure 1 on the breakdown of housing delivery, backlog, type of dwelling etc.

2 Financial Mail, September 2005

3 National Department of Housing website, national delivery report

struction of housing in the R150 000 to R200 000 range targeted at workers such as nurses, teachers and police, but also to fulfill government's ambitious goal of freeing the nation of slums and eradicating informal settlements by 2014, in line with the United Nations' Millennium Development Goals.

1.1.1. ECONOMY

The nature and scope of the housing finance system in South Africa is best understood by examining the country's economic fundamentals. South Africa has the most sophisticated free-market economy on the African continent. It represents only 3% of the continent's surface area, yet it accounts for approximately 40% of all industrial output, 25% of gross domestic product (GDP), over half of generated electricity and 45% of mineral production in Africa[4].

The country's economic system however, has a marked duality. A sophisticated industrial economy has developed alongside an informal economy. The industrial economy has an established infrastructure and economic base with great potential for further growth and development. The informal economy presents both untapped potential and a developmental challenge for South Africa. South Africa is also a gateway to investment into sub-Saharan Africa, and since 1994, South Africa's trade with and investment in other African states has increased significantly.

4 The South African Reserve Bank report posted on its website

1.1.2 ECONOMIC PERFORMANCE

The South African economy grew by 2.2% during 2001, 3% during 2002; 1.9% in 2003; 2.9% in 2004, and the government expects it to grow by 3.6% in 2005 and 4% in 20065. This growth has been spurred on by the current macro-economic policy, the Growth, Employment and Redistribution[6] that was implemented in 1996. Features of the Growth, Employment and Redistribution policy include liberalisation, fiscal discipline, export-oriented growth, privatization, labour flexibility, a focus on stabilising financial markets inside the country through the gradual lowering of interest rates while keeping inflation low (Government Gazette, 1996). These elements of the macro-economic policy are based on the neo-liberal framework of the International Monetary Fund and the World Bank.

The inflation rate generally has declined over the past few years, and the Reserve Bank, as mandated by the government, expects to meet its inflation target of consumer price inflation between three and six per cent. The prime overdraft interest rate declined from 17% at the beginning of 2003 to a current rate of 10.5%7. The national debt dropped from 48% of Gross Domestic Product in March 1997 to 36.8% for 2003/2004. The 2002/2003 budget deficit was R31.4 billion (2.6% of Gross Domestic Product). However, in his budget speech in 2004, the Minister

5 The South African Reserve Banks website report, a quarterly publication 2005

6 See Annexure on Growth, Employment and Redistribution Strategy (GEAR)

7 See list of figures on the history of interest rates in South Africa

of Finance announced that the deficit will rise to 3.1% of Gross Domestic Product in 2004/20058.

1.2 DEMOGRAPHICS

South Africa has a total population of 44.8 million of which 18.261,294 (39%) is economically active. According to a Labour Force Survey by Statistics South Africa only 11.91 million of the economically active are employed. The official unemployment rates stand currently at 26.5% of the country's economically active population. If one includes those who have given up looking for employment, it is closer to 40.5%. However, official statistics must be viewed on the basis that statistics for the informal sector of the economy are generally not available. The government views unemployment seriously and it is investigating the introduction of wage subsidies for employers to boost employment in the short-term for unskilled but employable persons. The government also intends to boost its public works programme to provide employment to unskilled and unemployed persons, concentrating on 21 urban and rural nodes identified by the government's Urban Renewal and Integrated and Sustainable Rural Development Programmes.

1.2.1 THE HIV/AIDS PANDEMIC

HIV/AIDS is a major health problem in South Africa. It has significant implications for housing finance and the economy in general. Various studies show increases in the percentage of the population with HIV/AIDS and it is estimated that one out of every nine South African has HIV/AIDS. This problem is recognised by the government who has set aside a budget of R2.1 billion to fund an anti-retroviral drug provision programme over the next three years. The amount allocated by government towards HIV/AIDS between 2004/2005 and 2006/2007 totals R12.3 billion[9]

1.2.2 HIV-AIDS AND HOUSING FINANCE

In the vast majority of cases, however, the security offered by a borrower is not sufficient and a sustainable income is crucial for the viability of the loan. In these cases, the bank requires life assurance, and if the applicant is HIV+, he/she experiences difficulty getting that insurance, and it is likely to be at a very high premium level. According to Ndinda (2004), the security of tenure for individuals infected with HIV/AIDS is a critical issue in South Africa. She asserts that people infected with HIV-AIDS are most likely to lose their land and housing in the absence of life assurance policies.

In an effort to deal with this potential scourge, the banks, through their mother body, the Banking Association of South Africa, are working with the Life Officers' Association and the Financial Services Board to try and find a mechanism that

8 Minister's budget speech 2004/05

9 National Department of Health budget report

would allow people to easily obtain cheap life assurance.

A large number of existing mortgage borrowers are, in fact, insured against a death attributable to an AIDS-related disease. Banks report that in cases where orphaned children are left alone to deal with a debt left behind by their parents the banks resort to the life cover, the loan is paid up and the orphans receive a mortgaged house. On the issue of a bank's lending to HIV/AIDS victims, banks in South Africa state that they do not discriminate against HIV-AIDS victims.

1.2.3 MORTGAGE INSURANCE COVER

The Office of the Banking Adjudicator has called on South Africa's banking industry to undertake a comprehensive audit of all its mortgage loans to ensure that adequate insurance cover is available to homeowners across the broad spectrum of society.

Every bank has a record of approved home loans. According to Melville[10], insufficient attention is being paid to compulsory insurance requirement, resulting in tragedy, confusion and additional cost to customers. "Recurring problems need to be addressed before more pressure is placed on existing structures."[11]

Many creditors insist that clients, particularly those at the lower end of the market, either cede their existing life policies or take out new policies to cover the outstanding amount of their home loans. But the Adjudicator receives several cases where, following the death of the breadwinner, it is discovered that no life insurance was in place, creating an intolerable burden on the bereaved family.

Many live under the misconception that a policy was taken out at the same time as the bond was registered, only to discover on the death of the bond holder that the policy was never issued. From time to time, a policy is issued initially, but later lapses due to the non-payment of premiums.

Wherever practicable, innocent people should be protected from this type of emotional turmoil. In light of this, the Office of the Banking Adjudicator proposed that all communications to customers regarding insurance should clearly indicate if reference is made to life or homeowner cover.

A bank employee concerned with mortgage bonds should be fully trained to ensure that insurance cover is issued and that the customer clearly understands who pays the premium and how.

The bank should also ensure that the appropriate policy documentation is sent to the customer and that the customer's attention is drawn to the provisions relating to insurance and that they are marked in bold. Particular care should be taken to clarify arrangements for the continuation of an insurance policy once the mortgage is settled.[12]

10 Banking adjudicator

11 Cited from the Press statement released by the Banking Adjudicator Neville Melville

12 This information was accessed from the office of the banking adjudicator

CHAPTER TWO

THE HISTORY OF HOUSING IN SOUTH AFRICA

2.1 PRE 1922 TO 2004

PRE 1922

The Housing Act (No 35 of 1920) was introduced under the terms of which a Central Housing Board was established to control the housing departments of the local authorities and to supervise the lending of government funds for the building of housing for blacks.

1923 – 1929: THE NATIVE (URBAN AREAS) ACT OF 1923

New legislation called for the establishment of three forms of accommodation – hostels, locations and native villages. Local Authorities assumed greater responsibility for housing but the extent of housing delivery was limited and fell short of the country's needs.

1929 – 1948: INDUSTRIAL DEVELOPMENT, URBANIZATION

During 1938 and 1948 there was a large and rapid influx of people into the urban areas. Sub-economic loans to local authorities for non-white housing for slum clearance resulted in some housing development. Construction of new housing declined in 1943 and 1944.

1948 TO 1960: THE NATIONALIST GOVERNMENT & SEPARATE DEVELOPMENT

The Group Areas Act of 1950 provided for stricter implementation of the policy of segregatation of residential areas. Large-scale resettlement of Blacks[13], Coloureds and Indians under the Group Areas Act

[13] During apartheid, the term 'Black' referred to all the non-White groups. In post apartheid South Africa the term meaning of the term 'Black' shifts depending on the context. In affirmative action, BEE type of contexts it refers to all non-Whites. In ordinary usage- Whites, Indians and Coloureds use it to refer to Africans. The term African in post-apartheid South Africa has also attained new meaning. Since Mbeki's 1999 speech 'I am an African' the meaning of African has become more ambiguous. However it is generally used to refer to the people indigenous to the country- that is Africans and not settler communities such as the whites or Indians or even mixed race people – Coloureds.

commenced. In 1947, the four roomed, 51/6 prototypewas developed and constructed at scale in all black townships.

1960 TO 1975: INCREASED SEGREGATION & TIGHTER INFLUX CONTROL

Influx control tightened, homeland development was undertaken and there were further restrictions on movement into white areas. The rights of black people to reside in urban areas was further restricted with the issue of housing permits allocated only to qualified and employed males over the age of 21.

1975 TO 1977: LEASEHOLD RIGHTS, WIDESPREAD RIOTING AND HOUSING SHORTAGES

The strict policies introduced during the previous phases were reassessed and adjusted. The most significant reversal was the re-introduction of leasehold rights for blacks in these areas. In January 1976 a General Minute of the Department of Bantu Administration and Development was circulated giving details of a home ownership scheme for blacks. This provided for a title on the basis of a 30-year lease. Reduced housing development in the preceding period manifested itself in a critical housing shortage.

1977 TO 1980: LEGISLATIVE AND POLICY CHANGES AND PROTESTS OVER RENT INCREASES

Legislative and policy changes introduced represented the acceptance of the permanence of urban blacks and a recognition that their rights needed to be extended, e.g. introduction of a 99 year leasehold scheme in April 1978 through the Blacks (Urban Areas) Consolidation Amendment Act No. 97 of 1978 which made private sector finance available, provided access to building society loans & enabled employers to assist black people in acquiring their own homes.

1980 TO 1994: PRIVATE SECTOR DEVELOPMENT AND INCREASED POLITICAL STRIFE

During the first half of the 1980s the delivery of housing by the private sector aimed at black middle income families grew steadily, but by mid decade people started to default on bond repayments as interest rates rose. Self-help housing emerged as a form of housing delivery which focused on owner builders and starter and incremental housing. The removal of influx control saw the rise of informal settlements and projects emerged which focused on upgrading (e.g. site and service) rather than removal. The government also sought to rid itself of the extensive rental housing stock through the Sale and Transfer of Housing scheme.

1994 TO 2004: NEW DEMOCRATIC SOUTH AFRICA

The Housing White Paper was promulgated in December 1994 and sets out the framework of the new National Housing Policy. It was aimed to increase the rate and scale of delivery. The promulgation of the Housing Act, No 107 of 1997 (the Housing Act) legislated and extended the provisions set out in the Housing White Paper.[14]

2.2 GOVERNMENT DEVELOPMENT STRATEGY AND HOUSING FINANCE BEFORE 1994

By the early 1990s the Housing Sector was fragmented, inconsistently funded, and lacked role definition and accountability. There were fifteen departments that dealt with Housing, namely one general affairs department, three own affairs departments, the department of Development Aid, four provincial authorities, and ten self-governing homeland authorities, and more than 60 national and regional state corporate institutions. These bodies were implementing some twenty different subsidy systems. In addition, South Africa's apartheid history had left the government with many inappropriate laws and procedures that needed to be repealed or amended.

The post-apartheid state faced the challenge of phasing out apartheid subsidies, numerous housing departments, laws and policies, while at the same time trying to harmonize these into a single national housing programme that reflected the new democratic dispensation.

Lack of capacity: The legacy of the past resulted in a depressed housing sector that lacked capacity both in terms of human resources and materials to speedily provide housing.

Non-payment of housing loans and service payment boycotts: The 1980s were characterised by bond, rental and service payment boycotts, initiated by a civic movement and local communities, aimed at undermining the status quo. As a result of this, many households were reluctant and unable to re-commence paying bonds, rents and services.

Lack of end user finance: For a number of reasons, including the non-payment of housing loans, service payment boycotts etc. many lenders are reluctant to lend to low-income families. Many low-income families are unable to access housing loans, even if they could afford to. The problem is made worse by phenomena such as redlining and discrimination, poorly designed credit instruments, and an unwillingness by households to save.

Insufficient land: Slow and complex land identification, and the allocation and development processes, has resulted in

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14 Cited from the report compiled by Mathew Nell and Associates dealing with history of black housing in South Africa

insufficient land for housing development purposes.

Inappropriate standards: Infrastructure, service and housing standards are inappropriate to the needs of the low-income market, resulting in difficulties in providing affordable housing.

Different requirements between Provinces: There are major differences in the housing needs of the different provinces. For example, in terms of the 1996 census, Gauteng and the Western Cape generally have housing backlogs in urban areas, while in Polokwane and the Eastern Cape, the housing backlogs are generally in rural areas. Given these differences, different policy responses are necessary.

Special needs of women: The demographic trends in South Africa demonstrate that women are generally poorer, with less access to resources than other groups. For example, the 1996 census showed that 26% of female heads of households earn less than R500 per month, compared with 13% of male heads of households. Women therefore, need special attention in terms of housing provision.

Inexperienced housing consumers: Because of apartheid many people have never bought or rented a house, or know anyone who has. There are many inexperienced housing consumers. Such consumers often make mistakes or fall prey to unscrupulous operators who steal their money.

A culture of building: Many cultural groups in South Africa have a culture of building where individuals and households are able to build their own homes. This is a significant opportunity for poor households to save money by building their own homes.

The Housing Sector as a contributor to the economy: The Housing Sector, if effective, can contribute significantly to the national economy. The Housing Sector has the potential to increase employment and individual wealth, improve the balance of payments, reduce inflation, encourage households to save, increase the demand for consumer goods and services, impact positively on the health of households and increase the Gross Domestic Product. Given these factors, investment in the housing sector has an important contribution to make to the overall economic growth of South Africa.

2.3 THE RECONSTRUCTION AND DEVELOPMENT PROGRAMME

The Reconstruction and Development Programme was introduced as an integrated, coherent socio-economic policy framework. It sought to mobilise all our people and our country's resources toward the final eradication of apartheid in the hope of building of a democratic, non-racial and non-sexist future. It represented a vision for the fundamental transformation of South Africa. That integrated process of transformation was to ensure that the country develops strong and stable democratic institutions and practices. It sought representativeness and equal participation as being part of a fully democratic and non-racial and prosperous society. It looked to building a sustainable and environment-friendly society.

The government, through a process of consultation with various stakeholders and different tiers of government, identified the following programmes as being the key medium and long-term programmes to drive the Reconstruction and Development Programme: meeting basic needs; urban and rural development; democratisation and institutional reform; and economic restructuring.

2.3.1 ADDRESSING SOCIO-ECONOMIC IMBALANCES AND UNEVEN DISTRIBUTION OF RESOURCES

The South African economy was built on racial divisions. Rural areas were divided into underdeveloped Bantustans, alongside well-developed, white-owned commercial farming areas. Towns and cities were divided into townships for blacks that had no basic infrastructure but white suburbs had good services and infrastructure. Segregation was at every level: in education, health, welfare, transport and employment. It left deep scars of inequality and economic inefficiency. Violence through the years has had a devastating impact on our society. The need to restore peace and a sense of security, has become paramount.

A programme was required that was achievable and sustainable and one which met the objectives of freedom, improved standards of living and an improved quality of life for all South Africans.

The Reconstruction and Development Programme was designed to be such a programme. It provided a framework within which choices could be made, and within which needs could be matched by affordability and factors constraining our ability to supply[15]. The Reconstruction and Development Programme involved both the government and the people in identifying the country's needs and the obstacles it faced.[16]

2.4 THE RECORD OF UNDERSTANDING

The South African government signed a Record of Understanding in October 1994 with the Association of Mortgage Lenders. The purpose was to increase the availability of credit, and to undertake a range of risk alleviation interventions.

The risk alleviation interventions comprise the Masakhane Campaign, the Mortgage Indemnity Fund, Servcon Housing Solutions and the National Home Builders Registration Council. These interventions are briefly summarised below.

The Masakhane Campaign: This is a government driven campaign, initiated by the Departments of Housing and Constitutional Development and the former office responsible for the Reconstruction and Development Programme. Although this is a campaign

15 Cited from the White Paper on Reconstruction and Development Programme, entitled, Government Strategy for Fundamental Transformation, September, 2004

16 Bulk of the information is cited from the RDP policy document accessible from the polity website

initiated by national government it is undertaken at all levels of government.

The campaign seeks to change public perceptions about and attitudes to the rights and responsibilities of individuals, communities and local government. Specifically, it aims to encourage individuals to pay their rates, service and mortgage or rental payments, contribute towards their communities and to feel a sense of community pride.

The campaign is ongoing and receives special attention annually in the context of a Masakhane Focus Week.

The Mortgage Indemnity Fund: The Mortgage Indemnity Fund is a wholly government-owned company established as a short-term intervention [three year period] in June 1995. Its purpose was to encourage mortgage lenders to resume lending at sustainable scale in the affordable housing market, in neglected areas in the country.

Its main focus was to provide financial institutions with indemnity insurance for a limited period against loss in certain areas, if they were unable to repossess properties due to a breakdown in the due process of law. To achieve this, the Mortgage Indemnity Fund provided cover to accredited financial institutions, assessed prioritised areas and provided accreditation for these areas and resolved problems in areas that were not able to be accredited.

The Mortgage Indemnity Fund was closed in May 1998 in terms of its original agreed mandate. During its period of operation it was able to generate R10 billion in new loans. In addition, it played an essential bridging role between government, financiers and communities attempting to lay the foundation for a healthy and sustainable future relationship[17].

2.5 THE EVOLUTION OF THE SOUTH AFRICAN HOUSING FINANCE SYSTEM

The pre-1994 period in housing finance was marked by a myriad of initiatives that were unacceptable to the incoming policy makers because of the different ideological perspectives. Nonetheless, it set the agenda and scene for what was to come in the late 1990s both in terms of policy, lending behavior and practices in the housing finance market. The decade leading up to 1994 was marked by widespread resistance to service and mortgage payments by residents in the black townships.

The financial sector, especially retail banks, experienced the brunt (15% defaults estimated at R10 billion)[18] of the rent and mortgage boycotts. During the 1980s this situation worsened with financial institutions unable effectively to enforce their lien over the properties which they financed. Consequently, new mortgage lending in township areas came to a halt

17 Information drawn from a number of reports, these include the department of housing report on housing institutions, President Mandela Speech during his inaugural Address to a joint sitting of parliament, 24 May, 2004 the MIF closure report, report on the record of understanding, report on Nedlac summit agreement on Redlining

18 cited from a study by A. Pillay on financial constraints for low income housing.

De Ridder, 1997- Estimated the 15% of the loans were in default as apposed to an industry norm of less than 3% for the housing sector.

in 1994, and no other housing finance products were widely available.

The mortgage form of collateral proved to be of high risk from two perspectives: first, the rule of law proved to be ineffective, resulting in the justice system being unable to evict residents in default or to allow banks to process a new mortgage to take over the loan obligation; and, secondly, the consistent lack of enforcement led to the deterioration of the physical condition of the homes to such an extent that the asset value declined[19].

The pressure on the political reform process continued and during this early transition period – leading up to a democratically elected government in 1994 - the South African Housing Advisory Council[20], under the chairmanship of Dr J H de Loor,[21] was given a mandate in October 1990 to revise the then policy and formulate a new housing strategy. A report, with specific recommendations, was produced in April 1992 and handed over to government. This report formed the basis for wider consultation with developers, bankers, housing non-government organizations and activists from the politically-aligned movements.

The process leading up to the compilation of the report was severely criticized particularly by the non-governmental sector and activists that represented the anti-apartheid movements, but in analyzing later developments it became clear that some of the recommendations or substantive policy directives manifested themselves in what we now know as the current housing dispensation.

The National Housing Forum existed between 1992 and 1994 and comprised representatives from a wide range of political parties, housing professionals, developers, and the finance sector. This forum was however plagued with issues that were politically motivated and eventually interest and energy was lost in trying to forge a new policy dispensation for low income housing that would address the housing needs of the majority of the population. According to Khan and Ambert (2003) the process ignored the voice of the landless and homeless in shaping the Housing Policy. Despite the tenuous debates and minor alterations, the National Housing Forum proposal became the new housing policy for South Africa when the White Paper on housing was published[22]

The downward slide in the retail intermediation capacity began in 1996 when Community Bank[23] closed for business as a result of poor market sentiment by its shareholders who realized that the bank was spending higher than normal costs in managing what was perceived to be a high risk portfolio. This phenomenon

19 SAHAC was a task group comprising of both public and private sector players and other co-opted experts from the housing, finance, economics and development disciplines.

20 Dr J H de Loor was appointed chairman by to ASHAC by the then National Party Minister L. Wesssels, responsible for Local Government, Housing and Public Works.

21 Dr J H de Loor was appointed chairman by to ASHAC by the then National Party Minister L. Wesssels, responsible for Local Government, Housing and Public Works.

22 Cited from Donaldson and Marais, 2002: 186

23 First attempt to set up a community housing bank that was capitalized by the public and private sector.

continued during the late 1990s into the 2000s which saw the loss of other small banks such as New Republic Bank, FBC Fidelity, the purchase by Amalgamated Banks of South Africa (ABSA) of Unibank and the buyout by Board of Executors of Cashbank. In 2002 Saambou, another small bank, closed its doors to its clients.

This trend marked the weakening of second tier retail institutions that demonstrated the capacity and willingness to deal with the low-income earner. Large banks argued that the risks of underwriting small mortgages were increasing and the profit margin on loans less than R80 000 was making banking operations unsustainable. In summary, there was pressure to develop a National Housing policy that would address the backlog and the recognize that alternative retail lending capacity had to be created with or without the key banks to make credit available to the majority of South Africans.

During 1993/4, the frustration of not being able to secure vacant possession[24] on mortgaged properties experienced by the mortgage-lending sector, during a time when a new government was installed, led to the rapid conclusion of an agreement between government and the mortgage lenders. In 1994 a Record of Understanding[25] was signed in terms of which government accepted responsibility for the enforceability of law and order by providing guarantees on historic problem loans. These were ring fenced into a portfolio to be managed by a joint venture between government and the lending community. To accomplish this, the company SERVCON[26] was established. The aim of the Record of Understanding was to allow commercial banks to be the main delivery channel through which housing finance could be accessed and to make additional credit available that would be used to augment the new capital subsidy programme. In 1995, the Mortgage Indemnity Fund[27] was established to provide insurance cover against political risk[28] in the areas approved for lending by the Mortgage Indemnity Fund.

2.6 HOUSING FINANCE AND THE NEW POLITICAL DISPENSATION

The Reconstruction and Development Programme[29] formed the basis for the thinking around a new development institution to deal with the issue of poverty and adequate housing opportunities for low- and moderate-income households. In1994, the state contemplated the establishment of a State Retail Housing Bank but was convinced in 1996 instead to establish the National Housing Finance Corporation to be the key wholesale lender to the housing finance sector. The state decided against a retail role - this was based on the poor performance and financial loss experienced through the South African Housing Trust. Pre 1994,

24 Vacant possession refers to the ability of lenders to perfect their security over properties financed without resistance from the homeowner and pressure groups.

25 Discussed in details below

26 Discussed in details below

27 Discussed in details above

28 This is the risk associated with politically motivated actions such as violence between opposing political parties or community based actions that were politically motivated towards preventing the sheriff from successful evictions.

29 Discussed in details below

the South African Housing Trust was the state's main vehicle for delivering housing – it was both the developer and provider of end-user finance. This was as opposed to a wholesale lender option which provides funding to intermediaries, also know as Retail Finance Institutions who in turn on-lend to end-users. The South African Housing Trust incurred huge defaults (25 000 mortgage loans in default).

The huge bad debts incurred by the South African Housing Trust made it unable to rehabilitate and eventually was closed down by the government.[30]Bolstering the housing finance sector, the National Urban Reconstruction and Housing Agency[31]was established. During the late 1990s three international visits were undertaken by representatives of the newly elected government to investigate the relevance of other housing finance models. Of note was the visit in 1998 by the then Minister of Housing to the United Kingdom where the role of the Federation of Social Housing Institutions impressed the South African delegation. Through bilateral co-operation with the British government, technical assistance was mobilized to set up the Social Housing Foundation[32] in South Africa. The Rural Housing Loan Fund[33] was established in 1996 along the lines of the National Housing Finance Committee as a wholesale lender with a specific mandate to serve the housing needs of rural inhabitants.

While the housing finance system was being set up, government designed a unique capital subsidy scheme that was to kick-start the low-income housing market. Between 1995 and 2001, one million subsidies were allocated and 90% of these were allocated to people earning less than R1500 per month; 8% to people earning between R1501 per month and R2500 per month, and the remainder to those earning less than R3500 per month[34]. The targeting of the subsidies was perfect in that the poorest segments of the population benefited the most. However, the consequence was that the subsidies distorted the low-income housing market by creating a concentration of housing in the price range of R20 000 to R25 000 with a typical unit measuring $36m^2$. The subsidy scheme led to mass construction of core Reconstruction and Development Programme housing in monotonous dimensions with little choice and differing quality particularly in the use of cheaper and inferior materials to cut down on costs. The beneficiaries were not happy with the end product. To deal with the need to maintain quality the National Home Builders Registration Council[35] was established in 1995.

30 Cited from A. Pillay- report on low income housing finance

31 Role and Impact of NURCHA discussed below

32 Discussed below in details

33 Discussed below in details

34 Unblocking Finance For Affordable Housing in South Africa, complied by Council for Scientific and Industrial Research, 2000.

35 Discussed below in details

Government, through the subsidy policy began to increase the supply of housing in the low-income market to the extent that 200 000 units were delivered per annum from 1996. Other provincially and locally based state-sponsored institutions also joined the finance system to boost the pace of delivery. The Gauteng Partnership Fund and the Metropolitan Housing Institution are examples of these delivery additions.

CHAPTER THREE

PLAYERS IN HOUSING DELIVERY: GOVERNMENT AND PUBLIC SECTOR

3.1 THE EVOLUTION OF THE NEW POLICY ENVIRONMENT

The housing market inherited by the South African government in 1994 had severe abnormalities due to the policies and political turbulence of the pre-democratic era. The National Housing Policy that was formulated and implemented, was strongly influenced by the need to address and normalise these problems. Consequently, the Policy took advantage of a number of opportunities that also existed within the environment. The aim of the Department of Housing was to determine, finance, promote, co-ordinate, communicate and monitor the implementation of policy for housing and human settlement.

Access to housing and secure accommodation is an integral part of government's commitment to reduce poverty and improve the quality of people's lives. Since the launch of the White Paper on Housing in December 1994, housing in South Africa has undergone fundamental changes.

Between 1994 and June 2004, the Housing Programme has provided more than 1,6 million housing opportunities to more than seven million people. During the same period, a total of 2.4 million subsidies were approved. The Minister of Housing, Dr Lindiwe Nonceba Sisulu,, unveiled the Comprehensive Housing Plan for the Development of Integrated Sustainable Human Settlements in September 2004. Cabinet approved the Plan as a framework for housing programmes over the next five years. It provided a comprehensive oversight by government in promoting the residential property market. This included the development of low-cost housing, medium-density accommodation and rental housing; stronger partnerships with the private sector; social infrastructure and amenities.

The Plan also aimed to change spatial settlement patterns, informed by the need to build multicultural communities in a non-racial society.

According to the Plan, the Government took responsibility for providing the bare minimum for the hard-core poor (income levels 0-R1 500) by providing them with a full housing subsidy of R28 000. The poor (income levels R1 500-R3 500) also received the full subsidy but were required to provide either a small contribution or sweat equity. A newly created subsidy band in terms of the Plan targets the middle-income level (those earning R3 500 to R7 000 per month) for whom the government pays a deposit. The role of the private sector is enhanced through the collapsing of subsidy bands, as well as the removal of blockages relating to down payments for indigents and pensioners.

Beneficiaries' spousal income will also be assessed. A fixed rate and other new loan products will be developed, including an option to convert the capital grant, where linked to home ownership or rental, into an annuity-based grant or benefit. Employers will be encouraged to make their contribution through employer-assisted housing. Barriers to housing trade will be removed through amendments to the Housing Act, 1997 [(Act 107 of 1997), to reduce the period during which resale on the private market is prohibited from eight to five years. Access to title deeds will be enhanced through measures that will stimulate a renewed uptake in the Discount Benefit Scheme, and the establishment of a high-priority focus on completing the registration of transfer in respect of houses constructed under the existing Housing Programme. All programmes are focused on ring-fencing informal settlements and replacing those with more adequate forms of housing. In addition, there will be greater co-ordination between national, provincial and local governments.

3.1 THE EVOLUTION OF THE NEW LEGISLATION AND POLICY FRAMEWORK

3.1.1 RENTAL HOUSING ACT, 1999

The Rental Housing Act, 1999 Act 50 of 1999, which came into operation on 1 August 2001, defines the responsibility of government in respect of the rental housing market. It sets out the duties and responsibilities of both landlord and tenant, and provides for the establishment of rental housing tribunals in the provinces, thus allowing for a speedy and cost-effective resolution of disputes between landlords and tenants. Among other things, the Act prescribes that:

- Leases may be oral or in writing. Tenants can demand a written lease.
- The landlord must give the tenant a written receipt.
- The landlord may require the tenant to pay a deposit before moving in.

The balance of the deposit including any interest must be refunded to the tenant by the landlord not later than 21 days after the expiration of the lease. In response to the need for rented housing in metropolitan areas, the Department facilitated the development of rented housing stock. The rented housing policy was finalised at the end of 2004 and the rented housing subsidy was expected to be implemented in 2005/06.

Three rented housing tribunals were set up in Gauteng, the Western Cape and in the North West. Other provinces are in the process of establishing similar tribunals. The Act gives these tribunals the power to make rulings in line with those of a Magistrate's Court.

3.1.2 HOME LOAN AND MORTGAGE DISCLOSURE ACT, 2000[36]

The Home Loan and Mortgage Disclosure Act, 2000 (Act 63 of 2000), provides for the establishment of the Office of Disclosure and the monitoring of financial institutions serving the housing-credit needs of communities. It requires financial institutions to disclose information, and identify discriminatory lending patterns. The Act is aimed at promoting equity and fairness in lending and disclosure by financial institutions, and will be implemented as soon as the regulations of the Act have been promulgated.

The Act aims to eradicate discrimination and unfair practice by encouraging banks and financial institutions to grant home loans to all its clients. It compels banks and financial institutions to disclose annual financial statements so that their lending practices in respect of home loans can be monitored. The Department of Housing also continues to participate in the deliberations of the Financial Services Charter to monitor the extent to which the targets set for the allocation of credit to low-income communities are met.

3.1.3 HOUSING CONSUMER PROTECTION MEASURES ACT, 1998

In terms of the Housing Consumer Protection Measures Act, 1998 Act 95 of 1998), residential builders have to register with the National Home-Builders Registration Council and are obliged to enroll all new houses under the National Home-Builders Registration Council's Defect Warranty Scheme.

The aim of the Act is to protect home-owners from inferior workmanship. Builders are responsible for design and material defects for three months, roof leaks up to a year, and any structural failures of houses up to five years. National Home-Builders Registration Council inspectors may assess workmanship during and after the building process. Banks are compelled by law to insist on home-builder registration and enrolment prior to granting a mortgage loan or finance. All new government-subsidised housing units constructed as part of approved projects enjoy protection against shoddy workmanship by housing contractors.

Through the Act, properties that were built with funding from the government's housing subsidy grant only, now enjoy protection against structural defects and must comply with minimum technical norms and standards. Previously, the properties of the poor did not qualify for such protection. The National Home-Builders Registration Council ensures

36 For more details on the Act please see annexure two which is the copy of the Act

that registered builders deliver within the minimum housing standards.

3.1.4 PREVENTION OF ILLEGAL EVICTION AND UNLAWFUL OCCUPATION OF LAND ACT, 1998

The Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 1998 (Act 19 of 1998), provides for the prohibition of unlawful eviction and sets out detailed procedures for the eviction of unlawful occupiers.

It prohibits the receipt of payment as a fee for arranging the occupation of land without the consent of the owner, and repeals obsolete laws relating to illegal squatting.

The Act provides a process for fair eviction of unlawful occupiers, and distinguishes between occupiers who have been residing on land for less than six months and those who have been residing on land for more than six months.

3.1.5 COMMUNITY REINVESTMENT BILL[37]

The Community Reinvestment Bill which was published for comment in 2003, has been put on hold pending the outcome of affordable housing lending targets identified in the Financial Services Charter. The Department of Housing will lead the government's response to the opportunities presented by the Charter. A framework is expected to be developed whereby affordable housing finance deals and partnerships between the finance and public sectors can be structured. Non-housing urban-development opportunities presented by the Charter will also be explored in an effort to increase private investment in community facilities in residential neighbourhoods.

The Community Reinvestment Bill is a sequel to the Home Loan and Mortgage Disclosure Act. 2000 and provides for mechanisms that will ensure more home loans are allocated to low- and medium-income borrowers. However, the Bill canno compel housing-finance institutions to take risks in meeting their community-reinvestment obligations.

3.1.6 SOCIAL HOUSING POLICY

The primary housing policy developments in 2003/04 included a new social housing policy. The policy creates an enabling environment for both private and public-sector investments in social housing projects. The policy, and associated legislation, supports urban regeneration, integration and densification initiatives, which promote urban efficiency. On 15 August 2004, Minister Sisulu and the European Union Ambassador, Mr Michael Lake, launched a R160-million Social Housing Programme in Pretoria.

Rented housing is central to the Department of Housing's strategy in providing alternative and cheap accommodation to those who work in urban areas. The Programme serves as a vehicle for providing housing

37 See annexure three on the details of the Bill

under different tenure options like co-operative housing and instalment sales.

3.1.7 PUBLIC-SECTOR HOSTEL REDEVELOPMENT PROGRAMME

The Department is revising the hostels policy to replace it with a policy that will enable the creation of humane living conditions, and provide affordable and sustainable housing on either a rental or home-ownership basis. Several pilot redevelopment projects have been launched.

The Department has also prepared a set of technical specifications for the upgrading or provision of new services, and the upgrading (redevelopment) of hostel buildings. Amendments to the implementation guidelines, which will direct the redevelopment of the Public-Sector Hostels Redevelopment Programme, was expected to be finalised by the end of the 2004/05 financial year.

3.2 FISCAL: GOVERNMENT EXPENDITURE

The Department received R4.8 billion in 2004/05 to finance national and provincial housing programmes. The allocation is made annually based on a formula that takes into account the backlog[38] in each province, the number of households in the various income categories of the subsidy scheme, the ratio between urban and rural housing, and the performance of the relevant provincial government.

Total departmental expenditure was expected to increase from R3.3 billion in 2000/01 to R5.5 billion in 2006/07. The People's Housing Process recognises the efforts and initiatives of those who prefer to build their own houses and are prepared to commit their resources, skills and energies to this task. It provides technical, financial and other support to these people. Funding is administered through the provincial Housing departments, while the People's Housing Partnership Trust helps build the capacity to speed up delivery.

3.2.1 CAPACITY-BUILDING STRATEGY

One of the major constraints in housing delivery is the lack of capacity: lacking an efficient workforce and requiring the installation of appropriate technology, equipment and systems for monitoring, evaluation and reporting purposes. The Department continues to provide support and assistance to provinces to ensure effective and efficient implementation of the National Housing Programme. The strategy and guidelines for housing capacity-building, as well as guidelines for provincial housing-capacity business plans were developed. National housing code workshops were held at both national and provincial level, aimed at capacitating internal and provincial officials, including municipal officials and councilors. It also aimed to increase knowledge on housing policies, programmes and legislation. In April 2004, the Department announced the amended version of the National

38 Please refer to annexure 1 for breakdown of backlog and housing delivery per province

Housing Programme dealing with housing assistance in emergency circumstances.

The National Housing Programme for Housing Assistance in Emergency Housing Circumstances was instituted in terms of the Housing Act, 1997. The amendment relates to the provision of the Constitution that everyone has the right to have access to adequate housing, and that the State must take reasonable legislative measures within its available resources to achieve the progressive realisation of this right.

The main objective of this Programme is to provide temporary housing relief for people in urban and rural areas who find themselves in emergency situations:when their existing shelter has been destroyed or damaged; or their situation poses an immediate threat to their life, health and safety; or they have been evicted or face the threat of eviction. The assistance involves prioritising funds from the provincial housing allocations to municipalities to accelerate land development, and the provision of basic municipal engineering services and temporary shelter.

3.2.2 NATIONAL HOUSING SUBSIDY PROGRAMME

Individual ownership subsidies are allocated to help beneficiaries acquire ownership of fixed residential property (housing opportunities) for the first time. New housing-subsidy programmes are being developed and certain existing programmes have been enhanced, including rental and social-housing subsidies. The housing-subsidy programmes, including project-linked subsidies, are being revised to introduce a procurement-compliant regime, consolidation subsidies, Peoples Housing Process, rural subsidies and institutional subsidies.

The Department increased housing subsidies by up to 11,68% with effect from April 2004. The subsidy for beneficiaries earning between zero to R1 500 rose by R2 700, from R23 100 to R25 800. Beneficiaries earning between R1 501 and R2 500 received a R1 500-subsidy increase, from R14 200 to R15 700. The subsidy for beneficiaries earning between R2 501 and R3 500 rose from R7 800 to R8 600. Subsidies for the indigent, including the aged, people with disabilities and the health-stricken, were increased from R22 800 to R25 580. The consolidation subsidy for beneficiaries earning R1 500 was increased from R10 900 to R12 521, and for indigents from R13 400 to R15 000.

The Department has designed a housing scheme that effectively caters for people with disabilities. People with visual impairment and other disabilities will get an additional amount to the normal subsidy to make their homes more accessible and comfortable, in accordance with their physical needs. In February 2004, the Department approved an extension to the existing housing subsidies for people with disabilities.

Project-linked subsidies

This housing subsidy mechanism enables a qualifying household to access a complete residential unit, which is developed within an approved project-linked housing subsidy project for ownership by the beneficiary.

Individual subsidies
An individual subsidy provides qualifying beneficiaries with access to housing subsidies to acquire ownership of serviced stands. It also allows the beneficiary to enter into house-building contracts, or to purchase existing, improved residential property that is not part of approved housing-subsidy projects.

This subsidy helps qualifying and non-qualifying beneficiaries get access to credit who wish to increase their subsidies.,

Consolidation subsidies
This subsidy mechanism affords former beneficiaries of serviced stands, financed by the previous housing dispensation (including the Independent Development Trust's site and service schemes), the opportunity to acquire homes.

Institutional subsidies
The institutional subsidy is available to qualifying institutions to enable them to create affordable housing stock for persons who qualify for housing subsidies.

The subsidy is paid to approved institutions to provide subsidised housing on deed of sale, rental or rent-to-buy options, on condition that the beneficiaries may not be compelled to pay the full purchase price and take transfer within the first four years of receiving the subsidy.

Institutions must also invest capital from their own resources in the project.

Relocation assistance
Relocation assistance provides an alternative option to defaulting borrowers three months in arrears on 31 August 1997, and where the option of rehabilitating these mortgage loans was not affordable. This alternative provides an opportunity to obtain affordable housing with the assistance of the housing subsidy. A person who is eligible for relocation assistance is required to enter into a relocation agreement, so as to relocate to affordable housing.

Discount Benefit Scheme
The Discount Benefit Scheme promotes home ownership among tenants of State-financed rental stock, including formal housing and serviced sites. In terms of this Scheme, tenants receive a maximum discount of up to R7 500 on the selling price of the property.

Where the discount amount equals or exceeds the purchase price or loan balance, the property is transferred free of any further capital charges. Rural subsidies: informal land rights. This housing subsidy is available to beneficiaries who enjoy only functional tenure rights to the land they occupy. This land belongs to the State and is governed by traditional authorities. The subsidies are only available on a project basis and beneficiaries are supported by agents. Beneficiaries also have the right to decide on how to use their subsidies either for service provision, the building of houses or a combination of the two.

In a Nutshell
South African housing policy is strong in its commitment to achieve a holistic concept of adequate housing by supporting citizens in achieving this vision incrementally. To ensure effective delivery and scaling up of housing finance mechanism, as well as obtaining easy access to credit, the government introduced significant interventions. Of note is the four key interventions:

i. **The Breaking New Ground Housing Strategy (2005).** The strategy collapses the subsidy system and creates a three-tier category of income groups for better targeting. In the categorisation, the hard-core poor (income levels 0 - R1,500) receive the full housing subsidy of R28.000[39]. The poor (income levels R1,500 - R3,500) also receive the full subsidy. A new subsidy band was created for affordable housing targeting the middle-income level (those earning R3,500 to R 7.000 pm), to whom the government pays a deposit.

ii. **The promulgation of the Home Loan and Mortgage Disclosure Act (2000).** The Act aims at promoting fair lending practices that require disclosure by financial institutions of information regarding the provision of home loans and disclosure of reasons for not advancing a home loan or mortgage to low income earners.

iii. **The Community Reinvestment Bill[40] (2003).** The Bill compels all financial institutions to engage in the provision of mortgage finance to make housing finance available to the lower end of the market.

iv. **The New National Credit Bill (2004).** The Act protects consumers from deceptive and unfair conduct by credit providers and credit bureaus. Further, it tries to educate consumers about credit and their rights.

3.3 THE NATIONAL HOUSING INSTITUTIONS

The Department of Housing's support institutions play an important role in enhancing the norms and standards of housing, as well as making housing finance more accessible to all South Africans.

The institutions are the National Home Builders Registration Council , the National Housing Finance Corporation , the National Urban Reconstruction and Housing Agency ,Servcon Housing Solutions, Thubelisha Homes, the Social Housing Foundation, the Peoples Housing Process and the Rural Housing Loan Fund.

39 Please refer to annexure on RDP houses on what subsidy delivers in terms of end product, size and quality of the unit

40 The copy of the Bill is attached in the annexure

3.3.1 NATIONAL HOME-BUILDERS REGISTRATION COUNCIL

The National Home Builders Registration Council was established in terms of the Housing Consumer Protection Measures Act, 1998. The Council protects the interests of consumers and regulates the home-building industry. Before the commencement of the Act, the National Home Builders Registration Council was established as a Section 21 company. Its main objective was to promote the common interests of persons occupied in the business or profession of homebuilding, through the regulation of the home building industry. In August 1995, the National Home Builders Registration Council (Pty) Ltd also established the National Home-Builders Registration Council Fund (Pty) Ltd. The main objective of this company was to establish an indemnity fund to promote the interests of contactors, by making funds available through the National Home Builders Registration Council on an ex gratia basis to finance the rectification of defects in housing units in circumstances where contractors were either unable or not liable to do so.

On 26 March 2001, a statutory council was established in accordance with the provisions of the Housing Consumer Protection Measures Act, 1998. The two former Section 21 companies were consequently dissolved and all their assets and liabilities were transferred to the statutory council.

More and more members of the public want to purchase homes that have been enrolled with the National Home Builders Registration Council. It's main source of revenue is the enrolment of new homes. In 2003/04, the National Home Builders Registration Council registered some 19 448 home builders and enrolled 281 462 homes. It also conducted 470 921 inspections during that period and received 16 288 complaints.

3.3.2 NATIONAL HOUSING FINANCE CORPORATION

The National Housing Finance Corporation was set up by the Department of Housing in 1996 with a mandate to ensure that every South African, who had a regular source of income was able to gain access to finance, and to acquire and improve a home of his or her own. The institution operates under specific exemption from the Banks Act (Act 94 of 1990) and receives all of its primary funding capital of R880 million from government. As one of the country's premier development-finance institutions, the Corporation acts as a wholesale funder and risk-manager, facilitating access to housing finance for low- and moderate-income communities.

The mission of the National Housing Finance Corporation is to ensure:

i. Development and appropriate funding of institutions, providing affordable housing finance at retail level. Such finance is aimed at the lowest possible income levels able to afford credit on a sustainable and commercial basis.

ii. Development and appropriate funding of institutions offering a variety of tenure options for residential purposes, in the under- and unserviced segments of the housing market.

iii. Sustained and growing mobilisation of savings in the housing process, through appropriate intermediaries. The National Housing Finance Corporation Business Plan states that it aims to create housing opportunities for low- and moderate-income families by:

iv. Funding or underwriting the funding of intermediaries and institutions;

v. To promote broader access to housing, building adequate and sustainable capacity within the organisations' it funds;

vi. Partnering organisations and institutions to deliver innovative housing-finance solutions. Between May 1996 and February 2004, the National Housing Finance Corporation approved facilities totalling more than R1.6 billion, and disbursed R1.5 billion.

In 2003/04, 55 loans to the value of more than R632 million were disbursed to finance 220 602 houses. Through its lending activities, more than 46 146 new housing units had been built by February 2004. Over 171 510 loans had been originated and facilitated, and a total of 62 new and emerging institutions had been supported. More than 1.1 million lives had been improved through the National Housing Finance Corporation 's funding activities.

3.3.3 NATIONAL URBAN RECONSTRUCTION AND HOUSING AGENCY

National Urban Reconstruction and Housing Agency was formed as a partnership between the South African Government and the Open Society Institute of New York, United States of America , in May 1995 to arrange finance for housing.

Over the years, National Urban Reconstruction and Housing Agency has raised additional financing through Swedish, Norwegian and US agencies, and through the Futuregrowth Fund, Overseas Private Investors' Corporation and Rand Merchant Bank. It is a tax-exempt, non-profit-making company. In 2004/05, government awarded the National Urban Reconstruction and Housing Agency a R3 034 000 grant. Operational expenses are funded by an initial allocation from government and a grant from the OSI. Since 1995, National Urban Reconstruction and Housing Agency has expanded its mission to expedite the:

i. Construction of housing for low-income households

ii. Creation of viable communities through financing the construction of housing-related infrastructure and community facilities.

By the end of the 2003/04 financial year, National Urban Reconstruction and Housing Agency had received claims totalling R4.8 million for 55 housing projects. Since 1995, National Urban Reconstruction and Housing Agency has supported the building of 135 421 houses, of which 13 827 were built during 2003/04.

3.3 THE NATIONAL PROGRAMMES

National Urban Reconstruction and Housing Agency uses a variety of interventions to arrange and package finance for those delivering housing to low-income households, infrastructure, and community facilities:

i. Bridging-finance loans for small contractors: National Urban Reconstruction and Housing Agency lends money to small/emerging contractors building subsidy housing.

ii. To assist contractors and developers who are unable to access bridging finance from a bank, National Urban Reconstruction and Housing Agency has entered into agreements with financial intermediaries that have specifically tailored products to ensure the appropriate flow of finance to projects. Applicants requiring this form of funding are normally contractors who also require financial management support.

iii. Bridging-finance loans for established contractors: National Urban Reconstruction and Housing Agency lends directly to established developers and contractors developing subsidy housing, credit-linked housing in the R50 000 to R180 000 selling price range, infrastructure and community facilities. Established contractors are required to provide a minimum of 30% of the project bridging finance required upfront.

iv. Financing for rental housing: National Urban Reconstruction and Housing Agency provides finance and guarantees for the construction and upgrading of rental stock for the affordable housing market sector. These facilities are provided subject to the specific requirements of the negotiated package. National Savings Scheme: Mandated by government, National Urban Reconstruction and Housing Agency launched the National Savings Scheme in 2001. As a result of the amendment to the Governments' housing policy in April 2003, the Scheme was substantially revised. In support of the amended policy, the National Urban Reconstruction and Housing Agency now works with provincial and local authorities to assist beneficiaries to save towards any contributions they are required to make to their subsidised housing.

3.3.4 THE MORTGAGE INDEMNITY FUND

The Mortgage Indemnity Fund was a government owned company that was formed for a three year period as a result of the signing of the Record of Understanding between the Department of Housing and the Association of Mortgage Lenders. The Record of Understanding aimed to facilitate a resumption of lending activities by banks in areas that had experienced a withdrawal of housing investment, due to a breakdown in the due process of law and the non-payment for mortgage loans. The Mortgage Indemnity Fund commenced operations in June 1995 and ceased to operate in May 1998. Mandated to undertake a short-term mechanism, to encourage mortgage lenders to resume lending at scale, in both the primary and secondary affordable housing market, in areas of the country where mortgage lending was disrupted due to past circumstances.

The key areas of focus were to :

i. Indemnify accredited financial institutions against loss, where they are not able to repossess properties due to a breakdown in due process of law.

ii. Become an interface between government, the private sector and communities so as to establish a sound working relationship between these stakeholders. Assist financial institutions to normalise their historical non-performing loans and properties in possession. Develop a rational basis for assessing lending risk in areas of the country where lending

Through the Mortgage Indemnity Fund indemnity was provided to financial institutions for the three-year period as was agreed in the Record of Understanding. As a result of the provision of this indemnity there has been a significant increase in lending in formally red lined areas. Fifteen financial institutions were indemnified, and indemnity cover was provided in 543 areas nation-wide. This resulted in 140 000 loans being granted with a value of R10 billion. Of these loans, 73 000 with a value of R4.1 billion occurred in the lower segment of the housing market. The Mortgage Indemnity Fund, as a short-term intervention, laid the foundation for future lending and normality in the low-income housing market. The process succeeded in unblocking vast amounts of new finance in marginalised areas and in obtaining clarity on key problems facing the housing sector.

A view from a former senior official, Thloriso Thelejane, suggests that the company did well under the circumstances but was quick to say that for any housing institution to achieve greater results it must operate on a long-term mandate.

3.3.5 SERVCON HOUSING SOLUTIONS

Servcon was established as a 50-50 joint venture between the Department of Housing (representing government) and the Council of South African Banks in 1994. Servcon was mandated to provide exclusive management services in respect of the designated portfolio, comprising

33 306 properties in possession , and non-performing loans with a value of R1.277 billion, for a period of eight years from 1 April 1998 to 31 March 2006. Servcon's mission is to normalise the lending process by managing non-performing loans and properties in possession in areas where the normal legal process has broken down, in terms of the normalisation programme agreed to by the Department and the Council of South African Banks.

Servcon has four programmes, namely:

i. The re-purchase/rescheduling programme that assists those who can afford an existing property by providing a mechanism to reassess the property and arrive at a reasonable buy-back or new-debt amount the subsidised rental programme that gives the occupant time to adjust to paying again after a period of non-payment

ii. Rightsizing, which is designed for the owner/ ex-owner who cannot afford a property or the rental option, by offering assistance to procure and finance, in whole or in part, an alternative affordable house special assistance, which is provided to the aged and disabled, such as providing relocation assistance in situ, i.e. without having to relocate.

Servcon disposed of 19 783 properties during 2003/04. It receives funding from the Department on a quarterly basis to cover 50% of its operating costs and 50% of interest on the value of the undischarged guarantee to the banks. In 2004/05, Servcon received a grant of R37 166 000.

3.3.6 THUBELISHA HOMES

Thubelisha Homes is a Section 21 company established in 1998 by the Department of Housing and Servcon. It commenced operations in 1999. Thubelisha Homes' mandate is to procure or develop housing stock appropriate for rightsizing purposes.

To achieve this, Thubelisha Homes has to: determine the number, nature and location of the required housing stock; secure funding to finance operations; procure or develop and finance relevant housing stock; evaluate the clients for capital subsidies; sell houses to approved clients under cost-effective and appropriate terms; communicate its role effectively to key stakeholders on an ongoing basis and obtain their support for the programmes. Rightsizing is a process initiated by the Record of Understanding signed by certain banks and the government, whereby occupants of bank.

These clients are permitted to occupy their existing homes temporarily while paying a predetermined and affordable rental to Servcon. Relocation assistance equivalent to the capital subsidy is available to Thubelisha via the provincial housing departments, to procure new homes for clients. Thubelisha was initially capitalised with a R50-million grant from government to assist with bridging finance and working capital. A division of the FirstRand Group, which provides a treasury function for Thubelisha, it manages this fund. In addition to ensuring the effective implementation of the rightsizing programme, Thubelisha's other core strategic objectives are to:

(i) increase the utilisation of female contractors on their projects; (ii) integrate the aged and clients with disabilities from the municipal waiting lists into their projects; (iii) tofacilitate the delivery of houses through a managed Peoples Housing Process; (iv) implement an accredited emerging-contractor development programme; (v) integrate waiting-list clients into rightsizing projects.

Thubelisha operates in six of South Africa's nine provinces. During 2003/04, some 11 713 stands were secured, with 5 405 houses handed over to clients. Between 1999 and March 2004, some 12 064 stands were secured, 9 777 subsidy applications completed, and 7 341 subsidies approved.

3.3.7 SOCIAL HOUSING FOUNDATION

The Social Housing Foundation was established as a Section 21 company by the Department of Housing in 1997. It is mandated by the Department to develop and build capacity for social housing institutions and to develop a policy framework for the sector.

The strategic objectives of the organisation, based on its mandate, mission and vision, are:

i. To provide social-housing-sector strategic information;

ii. To mobilise resources for the social housing sector;

iii. To facilitate the capacitation of sectoral participants;

iv. To promote the social housing sector(v) To facilitate sectoral stakeholder alignment;

v. To achieve Social Housing Foundation business-service excellence.

The Social Housing Foundation and the social housing sector have shown significant growth and development in recent years. By November 2003, there were 64 Social Housing Institutions in South Africa and 33 500 housing units had been provided. The most significant agreement relating to social housing was that between the European Commission and the South African government. The European Commission has pledged 20 million Euros (about R200 million) for social housing over the next five years. The European Commission programme has been strengthened, with a considerable amount of work conducted around building internal staff capacity, systems, procedures and manuals of the Social Housing Forum. Three Social Housing Institutions were successful in applying for grant funding for capacity-building and development, while plans for a number of additional institutions are in the pipeline. In 2004/05, the government awarded the Social Housing Foundation a grant of R15 347 000.

3.3.8 PEOPLE'S HOUSING PROCESS

The National Housing Policy: Supporting the Peoples Housing Process was adopted by the Minister of Housing in 1998. The

Policy focuses on poor families in both urban and rural areas, using capital subsidies to allow people to build their own homes. It also assists people in obtaining access to technical, financial, logistical and administrative support to build their own homes, on either an individual or a collective basis.

3.3.9 PEOPLES' HOUSING PARTNERSHIP TRUST

The broad mandate of the People's Housing Partnership Trust is aligned to the National Housing Policy:

i. To support the People's Housing Process, which defines the People's Housing Partnership Trust, its mandate being to engage with national, provincial and local governments and civil society to meaningfully participate and support the People's Housing Process;

ii. To create adequate capacity for the People's Housing Process, the Department established the People's Housing Partnership Trust in June 1997 to implement the Capacitation Programme to support the People's Housing Process. The main objective of the Programme is to develop capacity at all levels of government, and in non-governmental organisations, community-based organisations and communities to support the People's Housing Process.

The People's Housing Partnership Trust has five programmes: Communication; Training; Research and Development; Technical Advisory Services; and Corporate Services. The People's Housing Partnership Trust is funded by the United Nations Development Programme, the United Nations Centre for Human Settlement and the US Agency for International Development. Government assists the People's Housing Process by way of subsidies, facilitation grants and housing-support funding.

3.3.10 RURAL HOUSING LOAN FUND

The Rural Housing Loan Fund's main business, as a wholesale lending institution, is to raise money and lend it, and to enable retail institutions to provide loans to low-income earners to finance housing in rural areas. In 2003/04, the Rural Housing Loan Fund funded more than 54 000 home improvements, mostly built by home owners or small local builders. It committed over R272 million to 22 retail lenders and disbursed over R252 million to lenders. The Rural Housing Strategy to support rural housing, dealing with a comprehensive range of housing-related issues, such as tenure, livelihood strategies and broader socio-economic issues, was expected to be developed in 2004 and implemented in April 2005.

By August 2004, a farm-worker and farm-dweller policy was being developed to respond to the housing needs of rural communities. This included policy recommendations that would consider the economic, social and institutional sustainability of farm-worker settlements; the required institutional framework; the roles and responsibilities of implementing agencies; technical norms and standards; tenure security; suitable subsidy mechanisms; and legislative amendments.

3.3.11 THE URBAN RENEWAL

The Special Integrated Presidential Project for Urban Renewal was identified as one of the first Presidential Lead projects. The aim of the Project was to kick-start development in major urban areas, focusing on violence-torn communities and those in crisis. It was developed to ensure an integrated approach to the provision of infrastructure, housing, community and recreation facilities, and job opportunities. It aimed to transform previously disadvantaged communities and create sustainable and habitable living environments.

In addition, the Project has been viewed as an ideal opportunity to promote the business-planning concept and to give provincial governments the opportunity to improve co-ordination.

3.3. 12 URBAN UPGRADING AND DEVELOPMENT PROGRAMME

The Urban Upgrading and Development Programme is a joint bilateral undertaking between South Africa and Germany, established in 1994 between the national department of Housing and German Technical Co-operation. The department is playing a key facilitation and co-ordinating role in the implementation of the Programme in the Free State and Eastern Cape. Assistance to the two provinces and housing institutions has involved: (i) support to the Masilonyana Municipality in the Free State in bridging the buffer zone by promoting the integration of the Masilo township with the former town through territorial marketing; (ii) support for the implementation of the People's Housing Process projects in Mount Fletcher, Elliotdale and Tarkastad in the Eastern Cape; (iii) support for the national review of the People's Housing Process by the People's Housing Partnership Trust; (iv) the piloting of a municipal housing-sector plan as part of the Integrated Development Plan of the local municipality of Mohokare in the Free State.

By March 2004, the Urban Upgrading and Development Programme assisted roughly 2 500 household beneficiaries with housing subsidies, through integrated planning, self-help and management of construction processes. This helped these homeowners too gain a foothold in the urban economy by owning a transferable asset. The programme led to the fast-tracking of the delivery of roughly 18 000 housing units within the framework of the Housing Support Programme. The programme took into account the need to educate thousands of prospective or existing house owners about their rights and responsibilities as housing beneficiaries, and in the process empowering 550 household beneficiaries to grow the value of their national assets by investing more than R3 million in the upgrading and improvement of their houses; to empower thousands of community members to better understand the housing policy so that they can articulate their demands, make informed choices and be part of a decision-making process about delivery. Often this led to many of the programme's staff and community members improving their understanding of urban service-delivery markets and filling up some of the delivery gaps with rare skills.

3.3 13 SETTLEMENT POLICY AND URBAN DEVELOPMENT

In June 1996, South Africa made a commitment in Istanbul, Turkey at the Habitat II Conference, to implement the Habitat Agenda. The Agenda is the guiding international policy for human settlements. The Department of Housing is charged with the responsibility of co-ordinating the Agenda's implementation. To do this, national policies that support the principles and the vision of the Agenda had to be in place. The Urban Development Framework is essentially the key policy document that guides the implementation of the Habitat Agenda in South Africa. Besides the Framework, the Department has taken the opportunity offered by the Global Urban Observatory,to initiate the Urban Indicators Programme and a Local Best Practice Strategy[41].

3.3.14 SUMMING UP

Have Government Strategies and Institutions Fulfilled their Mandates?

First, it has to be said that the national government cannot, on its own, supply the housing needs of the country. The government recognises the need to attract housing investments from sources outside the state. Various interventions to make housing finance available has been initiated through the formation of the Public-Private Partnerships between government and financial institutions. This follows a Memorandum of Understanding signed in April 2005 within which banks and other financial stakeholders agreed to make different funding options available to low- and moderate-income households.

R42bn has been set aside over the next five years to boost delivery among the low-income housing finance market. Lack of finance is one of the main obstacles to housing delivery in South Africa. And, as the government has identified, the cornerstone of sustainable housing. Government institutions have not yet provided the significant impetus expected of them when they were initially set up.

41 All the data and information cited from a number of sources: the national department of housing website reports on government programmes; annual reports of individual institutions , i.e. NHFC. RHLF, NURCHA, etc; the parliamentary portfolio committee reports; the parliamentary monitoring group website and policy documents on housing accessed from the ANC website.

The concomitant effect on risk= and conservative lending has impacted negatively on the future and development of these institutions. Another constraint is that some of these institutions especially Social Housing Institutions rely heavily on debt funding with little grant funding and organisational equity. Inadequate capitalization and reliance on expensive debt has contributed largely to their inability to achieve their targets. Another factor is that most of these institutions have not operated for long and have restrictive mandates that make them ineffective in managing growth.

On setting up these institutions, each with a separate mandate, it was envisaged that these institutions would focus their activities on housing delivery and financing through retail and wholesale lending. Although their vision and strategies were very clear, there were areas of linkage. However a lack of coordination, synergy and a quest for development efforts were not easily identified. Similarly, other national projects planned and implemented without the involvement of the other party or due to a lack of interest in co-operating even though certain strategic decisions by one institution could have some direct bearing to the business thrust of other institutions.

This dysfunctionality led government to encourage coordination and greater synergy between all government spheres and institutions where all mandates were reviewed for all state development finance institutions' so that legislative and administrative measures could be established. The government is also looking to bolster its institutions through re-capitalisation, and by encouraging them to raise funding directly from the capital markets. The strategic intent is to enable them to grow by expanding their limited mandates. It is becoming increasingly clear that housing finance institutions should not be restricted to housing lending only. Diversification should be the way to go as institutions like the National Housing Finance Corporation are lending conservatively so that they dont struggle to sustain themselves by relying entirely on funding from government.

3.3.15 THE RENTAL HOUSING STRATEGY

The government through the National Housing Department has embarked on a pilot programme due to political pressure as part of the Job Summit to implement its rental strategy. The National Housing Finance Corporation was appointed as its implementation agency. The project is expected to deliver a minimum of 50000 units and a maximum 150000 units, 75% of which is rental accomodation and 25% home ownership. Each project is expected to deliver a minimum of 5000 units. The first three projects in KwaZulu Natal, Mpumalanga and Gauteng. In Mpumalanga, 1 131 units have been completed for phase one. In Gauteng, 1 400 units have been completed[42].

The vibrancy in the rental housing market can be attributed to government's hands-on approach, which has entailed large volumes of its own capital while also assuming some of the credit risk. It can also

42 National Housing Finance Corporation Job Summit Programme Progress Report

be attributed to the effectiveness of the Public-Private-Partnership strategy. This particular approach not only created an appetite but also brought about a significant landscape to the inner cities where a concentration of rental stock units created an unanticipated demand, especially amongst professionals. The Johannesburg Housing Company and The Trust for Urban Housing Finance - a development finance organisation that provides short and medium-term loans for the purchase and refurbishment of residential rental property in South Africa's inner city areas - have both made headway in regenerating inner cities. The country's largest Public Private Partnership in the rental market and bulk of the funding comes from the National Housing Finance Corporation and the Banks. Through its project, known as Brickfields, the Johannesburg Housing Company completed its first phase of a R98.7million housing project. The second phase has already begun and is expected to deliver 350 to 400 dwellings, at a total cost of R100 million with the National Housing Finance Corporation and ABSA contributing R25 million each[43].

3.4 THE INFORMAL RENTAL MARKET

An informal rental market already exists. This market is small and caters to the poor. Savings and informal income are the resources used to pay rents for accommodation provided by households and landlords. The dwellings in this segment are semi-formal backyard structures and inner city apartments. Typical in big cities of South Africa, particularly in Johannesburg and Pretoria, is the uncontrollable growing trend of slumlords who hijack buildings especially whose owners have abandoned them, due to arrears in municipal services and electricity. This group of slumlords target desperate, homeless people and offer them accommodation relatively cheap and pocket the money. Because the due process of law favours them this creates distortions and instability in the inner city, let alone unhygienic conditions within which they live. It can take up to twelve months to have them evicted by the city council through the order of the high court. In a desperate bid to curb the scourge which not only affects rental but also land owners and homeowners, the government is now amending the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 1998 (Act 19 of 1998), which by implication prevents outright eviction of defaulting tenants and land invaders, as opposed to propelling a lengthy court case to enforce evictions.

3.5 THE NON-GOVERNMENT SECTOR AND MULTILATERAL AGENCIES FUNDING

The non-government organization sector lacks the capacity and resources to deliver housing. However, the Peoples Housing Process[44] is designed to assist beneficiaries to develop skills as part of the self-help process. In South Africa, the amount of

43 NHFC Housing Market Bulletin, vol.2 Issues 8

44 The Peoples Housing Process is an initiative sponsored by the National Department of Housing to capacity building and limited funding assistance to grassroots housing production. There are also Non Government Organizations that are actively involved in facilitating this process.

capital injection that comes from donor agencies is difficult to quantify because funding is not centrally controlled. It becomes difficult to determine the volume of funding that gets channeled into the housing sector because the current practice from donors is to invest directly into projects and intermediate through national housing finance agencies like NHFC, SHF, NURCHA, and RHLF.

The United States Agency for International Development (USAID), the Canadian International Development Agency (CIDA), the German Technical Assistance Corporation (GTZ) and the European Union (EU) are the forerunners contributing to housing finance in South Africa[45]. Their funding facilitated through bi-national and bilateral arrangements and agreements is channeled through individual institutions who in turn disburse the money under the terms and basis of the agreement. It has to be stated that bulk of the funds are debt funding. Only few institutions were fortunate to have access to an initial injection of donor finding that could be used for capitalization and project funding without relying on expensive debt.

This form of funding allows organic growth and increase operational surplus and manageable levels of debt that has been additionally leveraged. However many institutions are not so privileged, as the type of funding they get mostly in trenches cannot be expected to yield any significant delivery of housing finance as it is in the form of grants, and soft loans particularly to aid institutions on their capacity building mechanisms. Therefore performance in this sector of the market is very limited and often directed towards technical assistance as opposed to housing finance delivery.

45 M. Pillay 2003 report on housing finance

CHAPTER FOUR

COMMERCIAL BANKING APPROACH TO LOW INCOME HOUSING

4.1 THE BANKS LENDING STRATEGY

The four major banks in South Africa (Absa, Standard Bank, Nedbank and First National Bank) are of the opinion that banks in general have over-lent to the low- and moderate-income market. However, the banks are unable to articulate this market with confidence without the necessary hard-core data.

The four major banking groups together hold over 85% of all mortgage loans[46]. This accounts for R167.1 billion[47]. No breakdown is possible between the residential and commercial mortgages, as banks are either reluctant to share this kind of information or they do not have the ability to generate such information.

The loans in default (33 300) are constantly mentioned publicly to justify the banking industries' limited exposure to a market that is both politically and economically unstable and considered high risk. Further, the failure to penetrate deep outreach has been built on an argument around commercial sustainability and capabilities that are consistent with first world banking and transacting requirements.

The banking industry has since been overwhelmed by the introduction of the Financial Services Charter which has a section on Low Income Housing. It is a 10 year voluntarily initiative to the value of R42 billion aimed at providing low-income housing finance to low-income households with a stable income in excess of R1 500 per month and less than R7 500 per month. The initiative came into effect on 01 January 2004. Outside the big four commercial banks, few small banks are actively targeting the affordable housing market. They provide housing finance either through specific loans (Cash Bank), micro loans (African Bank) or both (Saambou, Unibank)[48]. These banks

46 Please see annexure on how the mortgage process works in South Africa

47 Report by M. Pillay on the strategy of banks

48 The period 2001 and 2002 is characterized by the demise Saambou and Unibank as a result number of small banks were liquidated and others voluntary offered to have their

have shown innovation by extending housing products to their micro finance clients, targeting smaller employers forging alliances with big banks[49]. Saambou, Unibank and Cashbank provide mortgage loans. Although their products might look similar to the big banks, their terms and conditions are more accessible. Mortgage bonds as small as R40 000 are provided although the typical mortgage would be between R60 000 and R150 000. Most of these banks' primary business is micro-finance.

It should be noted that the banking sector had a turbulent period between 2001 and 2002, followed by a profit warning from ABSA in early 2002 over its exposure to the risky small loan sector through its subsidiary, Unifer. This was followed by Saambou's fallout, when its asset quality and management problems became apparent. The bank was allowed to fall after a run on its deposit, resulting in a systematic risk within the banking sector.

The loss of confidence spilled over to the sixth largest bank, Bank of Executors, which experienced a significant run on its deposits. As a result, some small banks handed over their licenses voluntarily. These were hefty blows that small banks had to deal with: a debacle that created undesirable effects on low and moderate-income households as the banks extended their products to the mass market.

4.2 TYPICAL LENDING PRODUCTS AND INSTRUMENTS IN THE LOW-INCOME MARKET

Solid progress was made during 1998 in resolving problems relating to the provision of finance for low-cost housing. Government departments, agencies and the banking industry have all co-operated in developing financing methods that use the capacity of banks to mobilise funds, yet do not impose untenable administrative burdens on the banks or require them to accept risks contrary to prudent banking practice.

4.2.1 SMALL MORTGAGE BONDS

Apart from direct government subsidies to the very poor, privately owned self-standing dwellings financed by mortgage loans were initially considered to be the only solution to the massive housing backlog among low-income communities. The most favourable government subsidies, limited to a maximum of R15 000, were available to applicants with incomes of less than R1 500 per month before the adjustment. They, and other low-income home buyers, looked to mortgage finance from the banks to fund the balance of the purchase price on their homes.

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trading licences withdrawn by the central banks,

49 M. Pillay report on strategy of smaller banks

However, providing mortgage finance for these homes became problematic for several reasons. By far the greatest difficulty was affordability. With a 45m^2 self-standing house on a serviced site costing a minimum of R55 000, fewer than 10% of unhoused families could afford the 10% deposit (R5 500) or who could meet the monthly payments on a loan of R49 500. At 20% per annum, a monthly income of at least R4 000 was needed to qualify for such a loan, yet anyone earning an income of that amount was disqualified from receiving a housing subsidy. The housing strategy was not functioning as expected.

For the banks, originating and administering low-value mortgage loans is costly relative to the actual loan amounts. The interest earned on them is insufficient to cover the costs. The originating cost - which includes the expense of evaluating, explaining and processing a loan - has nothing to do with the amount of the loan and is quite frequently proportional in costs.

4.2.2 NON-PERFORMING LOANS

South African banks have been faced with intractable problems –by the failure of township residents to pay their rates, service charges and mortgage bonds. The result has been 63 100 township property loans have defaulted. Of these, approximately 33 100 are in the Servcon 'ring-fenced' portfolio which is 50% guaranteed by the government. The other 30 000 are in the hands of the banks themselves[50].

4.2.3 MICRO HOUSING LOANS

A market developed for micro housing loans during the past few years because of the limitations on mortgage lending for low-income homeowners. These loans are made in conjunction with employers who perform three critical functions: they carry most of the burden and cost of originating the loans, they make salary roll deductions and pay the monthly instalments straight over to lenders, and they arrange pledges of employees' pension or provident fund benefits to the banks as security for the loans.

The originating costs are very low and the losses are minimal. One disadvantage is that few of the potential borrowers have a pension or other benefits valued in excess of R15 000, and the average loan under the programme is therefore R10 000. Another disadvantage is that, as interest rates and instalments are variable, borrowers found that larger-than-expected deductions - which many could not afford - were taken off their salaries because of interest-rate increases. Nevertheless, the banks have more than R3 billion of these loans on their books. Some of the micro-lenders have also been very active in this market and have lent more than R3 billion. Altogether, micro housing loans gives ac-

50 For further details please see Servcon and MIF on chapter three above

cess to housing finance to another 20% of the previously un-housed[51].

4.2.4 GATEWAY HOME LOANS

Recognising the limitations of micro-loans in providing housing finance, the National Housing Finance Corporation Limited and the banks jointly designed the Gateway programme. Under this programme the banks and other intermediaries originated loans in conjunction with employers (in much the same way as they do for micro-loans) which are then sold as loans to Gateway, a subsidiary of the National Housing Finance Corporation.

Gateway: It uses the financial capacity of the National Housing Finance Corporation to stabilise the interest rate for the borrower; it accepts 50% security instead of the 100% backing required by the banks; it raises the necessary funds by issuing bonds in the market.

The Gateway programme was designed to overcome problems that were initially encountered by the banks in granting small mortgage loans to low-income homeowners. The programme is expected to give another 10% of the currently un-housed population access to housing loans of between R20 000 and R35 000 which they would not have been able to obtain without this assistance.

4.2.5 HOME LOAN SECURITISATION

S.A. Home Loans recently announced that it was introducing a home-loan securitisation operation. In 1988, the then United Building Society securitised R250 million of mortgage loans. This type of business operation is not new to South Africa.

Securitisation involves granting and registering bonds, collecting them into a 'pool' and issuing notes that represent an interest in the pool. The notes are then traded on the open market at either a discount or a premium depending on whether the return on the pool is less or greater than the rate of interest that can be earned on alternative investments.

For securitisation to be effective it must contain the features listed below:

- There must be a reasonable and efficient distribution network to originate the loans;
- The loans must be of high enough quality that potential investors can concentrate their attention on the return and the tradability and not have to worry about the quality of the underlying mortgage bonds;

51 Cited from the Micro-Finance Regulatory Council Website and South African Reserve Bank quarterly report, August 2004.

- There must be a well-developed and active market in the notes.

S.A. Home Loans announced their criteria, notably that the minimum loan is R100 000 and that the borrower must put up at least 30% of the purchase price. As securitisation is only really feasible in the high-value markets it is possible that competition for this business could become very intense. This competition could force the banks - as occurred in other areas of banking - to recover the full costs of doing business in each segment of the home loan market and eliminate cross-subsidisation from high-value to low-value customers. Securitisation could reduce interest rates in the high-value home loan markets and increase rates in the low-value markets.

4.2.6 THE MORTGAGE BANK SYSTEM

A major feature of the mortgage bank system is the use of long term (25 to 30 years), fixed rate mortgages. Lea (1995) describes the mortgage system as an alternative to the depository institution model. In this system, mortgage banks originate and service portfolios of mortgage loans that are funded by the securities they issue. The securities are obligations of the mortgage banks that are normally purchased by institutional investors[52]. The mortgage bank, unlike the depository system, has a combination of retail functions as well as wholesale functions. The wholesale role emanates from the need for such a system to raise funding directly from the capital markets. Germany and Scandinavia have mortgage banking systems. Similar institutions to the mortgage banks were established in the early 70s in South Africa called mutual banks. Mutual Banks relied on retail deposits for its revenue, and because of its narrow base, was not able to compete with the growth of commercial banks. Mutual banks were not able to distribute reserves and profits to shareholders due to legal establishment requirements. This led to investors to concentrate only on profitable commercial ventures.

4.2.7 SECONDARY MORTGAGE MARKET

Currently, the most popular approach to financing of housing in large volumes is through the system of secondary mortgage markets. A secondary mortgage market involves the sale of mortgage loans (or loan portfolios) or mortgage-backed securities backed by specific pools (Boleat, 1985:77). According to Van Order (2001) this type of structure entails the transfer of risks and ownership of mortgage loans to a third party. These loans must be sold to specialised institutions called conduits or special purpose vehicles, which are separately capitalised. These institutions are able to raise funds through issuance of securities, backed by the loans. The investor, in a guaranteed security, does not have to worry about default risk (but is still exposed to interest rate risk). The system was originally developed in the United States of America as a method for selling mortgage loans to reduce the interest rate risk associated with fixed rate mortgage lending (Guttentag, 1998:21-23).

e52 M. Lea 1995 Housing Finance Systms

In 1999, under the National Housing Finance Corporation, a company called Gateway Home Loans[53] was established to develop the secondary housing finance market in South Africa. Due to the slow pace of sales, purchases and development of the new stock in the primary housing market resulted in a small number of qualifying loans that could be bought by Gateway and packaged into securities and sold on to investors. A weakness was that this initiative was ahead of its time. Two possible reasons that could explain the failure of Gateway Home Loans after only two and half years of its pilot operation are:

i. banks were not able to originate conforming loans in volumes that could be securitized, and

ii. the primary market sales, re-sales and the ineffectiveness in the legal system in dealing with defaulters, contributed to low re-financing and low turnover of the housing stock in the primary market. The system is successful in the United States because the economy and the housing market are efficient and it works well without subsidies and other distortions like statutory interest rate controls (Hendler and Pillay, 2002:16).

Summary

Establishing precisely and accurately the current market share size and the bank's investment in low-income housing is extremely complex and has proved a futile exercise. There is no readily available information or data from the banks and the banking group to quantify the bank's actual involvement and contribution in the market.

The 2005/06 ABSA annual report - which by the way is the best financial report of the four banks with regard to mortgage financing - falls short in terms of aggregating the home loan portfolio volumes. According to its annual report, ABSA's mortgage advances significantly increased during the year under review, primarily because of low interest rates.

The lower the interest rate the easier it has been to reduce the capital portion of customers loans through additional monthly payments, which had a negative impact on income from the advances book. Final grants and bond registrations increased significantly during the year and 558 843 applications were processed by the Group's six processing centres. This represents an 81% increase on the value of applications in the financial year[54].

The banks mortgage market share for 2004/5 financial year is as follows[55]: Absa leads the pack with 31.5%, Standard Bank is hot on the heels of Absa with 25*% and surprisingly Nedbank (23.5%) whose previous strategy was to catch up with the big three has surpassed First National Bank who share is only 16%. Other smaller banks have had it tight since the days of Unifer and Saambou and cumulatively they have a market share of 4.9% of the mortgage market.

53 Discussed in details in chapter two

54 ABSA annual report 2005/6

55 Standard Bank annual report 2004/5 financial year, see also graphic illustrations on the list of figures

CHAPTER FIVE

CHALLENGES AND FINANCIAL CONSTRAINTS IN LOW INCOME HOUSING

Approximately one fifth of South Africa's households live in previously designated black townships (2.28 million households in 2002). Of these, approximately one third own their own homes, one third rent formal housing and one third live in informal housing56. A review of the October Household Survey and the Labour Force Survey of 2002, indicates that approximately 2.28 million households lived in these areas in 2002. This is an 89% increase from 1995 when 1.2 million lived in these areas. These households comprise 21% of all households in South Africa. There has been an increase in the number of households living in black townships since 1995, when 15% of all black households were living in these areas[57]. This reflects a significant migration from rural into urban areas, with the first point of entry being via the townships. Population growth and the splitting of households has also been a factor.

In 2002, 33% of black households owned their own property, while 34% rented formal accommodation, and 16% rented informal accommodation (backyard shacks), and another 17% lived in informal settlements. By comprison, in 1995, 35% of households were owned, 37% rented formal accommodation, 15% rented informal accommodation and 13% lived in informal settlements[58]. This suggests that the housing situation in the townships worsened because a higer number of people were living in informal settlements and a lower proportion lived in formal or rented accomodation. This also suggests that the supply of new housing stock in these areas was not sufficient to meet the demands.

56 Census data by Statistics South Africa

57 TRPM report by Shisaka 2004

58 TRPM report y Shisaka

5.1 DEFINING SUB- MARKETS IN SA TOWNSHIPS

The residential property market in black townships has been categorised into six sub-markets that display different characteristics:

Sub-Market	Definition
Old township stock	Old township stock- a formal housing unit including free standing houses row and semi-detached houses and flats. The most common form of house provided was a four roomed house. The stock is generally old and in poor condition provided by old government between 1948 and 1960. The new government undertook a programme to transfer this stock into private ownership
RDP housing stock	RDP stock- comprises housing stock built as part of the national housing subsidy programme since 1994. The consists either a formal free standing housing unit on an ownership basis, a flat, cluster or free standing house provided for rental or a site with funding for development of a dwelling
Informal Settlements	Informal settlements- comprise informal dwellings erected by the occupants using non-conventional building materials. Structures are erected on the land without permission of the owner. No title is available due to the informality of the settlements
Private housing stock middle income	Private sector. The type of housing comprises a formal free standing housing unit developed by a private sector developer who sells the unit to the buyer.
Site and Service Stock	Site and service stock- is provided as part of a project whereby households are provided with a site and services and are required to develop the top structure incrementally on their own. The projects were provided by government.

Source: TRPM 2004

5.1.1 POORLY PERFORMING SECONDARY MARKETS

The townships have a distinct history, with a direct impact on the residential property market. During the apartheid era, these townships operated as a closed market. They had next to no social infrastructure and poor services. This directly influenced the way in which housing was delivered and property was valued and traded in these areas. Since

1994, the residential property market in the townships has operated as an open market[59].

The township areas emerged in the early 1900s as towns in South Africa developed. The national study on the township property market conducted by Shisaka Development Management Services in 2004, reveals that one fifth of South African households lived in former township areas, in housing with an estimated asset value of R63.8 billion. Due to the dysfunctional nature of this secondary property market, these households were not able to realize a proper value or trade in the property market. This phenomenon is recognised by analysts as a significant factor impeding the growth and development of the secondary market in South Africa.

5.1.2 TRANSACTIONS IN THE SECONDARY PROPERTY MARKET

The extent of activity in this secondary market in the townships, was extremely limited, with very few formal transactions occurring. There is evidence of transactions occurring informally. The 'housing ladder' - whereby a household sells one property in order to purchase a better property - was not occurring and there appears to have been very limited movement of households between the submarkets.

According to the Household Survey, by Shisaka 2004, of the 2,004 households interviewed, only 12% transacted in the secondary market over the past 5 years. This is further substantiated by the Cadastral Review which analyses the Deeds Registry data for 12 of the 18 survey sites, only 11 were undertaken. This analysis shows that in the past 5 years, approximately 7.5% of all proclaimed properties were secondary transactions. Of the 7.5%, most (65%) occurred in respect of the privately developed sub-market, 12% in respect of old township stock sub-market, 13% the Reconstruction and Development Programme sub-market and 10% the site and service sub-market. In respect of these registrations, the volume is extremely low: both overall (7.5%) and for each of the sub-markets (Private Sector 12.5%, Reconsruction and Development Programme 6.4%, old township 3.7% and site & service 3.4%).

5.1.3 WEALTH CREATION AND REALISABLE VALUE

The use of residential property in the townships to create wealth and or income for occupant households is extremely limited. Households are generally unable to use their property as collateral and generally are not making use of these property to generate income, either for rental purposes or for business purposes. In addition, the current poor performance of the secondary market has inhibited the ability of owners of residential properties to sell their properties at appreciated values.

It is clear, to use Hernando de Soto's argument in 'The Mystery of Capital', that housing assets are 'dead capital' because low-income households cannot transform their property into capital. It is certainly true for the whole township residential market in South Africa, and particularly

59 Shisaka report on TRPM 2004

true for the informal, incremental and old township stock sub-markets. Given these constraints, the table below provides an overview of the way in which transactions are occurring in each of the sub-markets.

Table: Overview of the Transaction Process by Sub-Market

Sub–market (% secondary transaction)	Property transaction process
Informal (24%)	This process of buying and selling a property and transferring ownership is completely informal and not enforceable in terms of the law. The transfer of a dwelling from a seller to a buyer occurs through direct negotiation between the parties. Anecdotal evidence indicates some attempt to formalize. In some cases the transaction is documented using Government Councillors and Officials or Community Leaders as witnesses. In some cases prospective owners are required to obtain the permission of the surrounding community structure prior to purchasing.
Incremental (RDP – 7,9% Site and Service 2,7%)	Properties in this sub-market in respect of the secondary market are transferred predominantly through purchase (56%), although inheritance (26%) also occurs. The ability to undertake a transaction using formal processes (deeds registry) in this sub-market currently is extremely limited both because of delays in primary transfer and as a result of the restriction Section 10A of the Housing Act, 1997 which prohibits the sale of these properties for a period of 8 years but later changed to 5 years it is likely that property purchases in this sub-market are occurring through informal process whereby the buyer and seller enter into a verbal or written agreement but do not formally register the transaction.
Old Township stock (4,2%)	Properties in this sub-market in respect of the secondary market are transferred predominantly through inheritance (50%) and purchase (31%). Some stock is obtained free through Government (19%). The ability to undertake a transaction using formal processes (deeds registry) in this sub-market appears to be difficult for the reasons detailed above.
Privately developed (12,4%)	All households have land title in this sub-market and the transfer of property from a seller to a buyer occurs in respect of the formal transfer process as set out in the Deeds Registry Act.

Source: TRPM 2004

5.1.4 SAVINGS AND KEY BLOCKAGES TO HOUSING FINANCE

Savings generally are not linked to a housing product, but the majority of the market envisaged deploying their savings towards a deposit on a home. This illustrates a widespread intention to access housing finance, rather than to buy a house for cash. Despite the savings effort, cost estimates suggest a significant shortfall between savings and the required deposit.

Despite the construction of more than 1.8 million housing units since 1994, the housing stock shortage remains a key obstacle to housing purchase. According to the 2003 National Housing Finance Corporation's national borrower survey, over 90% of prospective buyers - total market 1.5 million urban low- and moderate-income households - have actively looked for a house to buy, but only a quarter have been able to identify a suitable property. Low income, access to credit, and lack of affordable housing stock, all emerged as the biggest obstacles to home ownership.

5.1.5 EFFECTIVENESS AND AFFORDABILITY

Informal lenders price for risk. The consequence of this is a higher risk premium for loans with no or little collateral. In economies where the legal system and procedures for transferring assets or collateral to the lender are weak, it contributes to risk based pricing. Markets function well when administrative law and procedures work well, and a well-defined mechanism for punishing deviations from the norm can be applied. In the South African context, the laws governing property and credit are well defined and implemented by the government through the justice system. With this in place, two problems have plagued and to a certain extent continue to plague, the housing finance market:

i. the claim by banks that they are unable to enforce property rights in certain residential areas;

ii. the defiant manner in which some citizens break the laws by ignoring loan obligations and even eviction orders.

Since 1996 there has been credit rationing According to Hawkins (2003), both the banks and non-banking lenders in South Africa, have seen an opportunity to transact in the low-income housing market where the demand for credit far exceeds the supply, but they are reluctant to do so. This credit rationing can be addressed if the risk of default can be eliminated through effective property laws, guarantees, insurance policies and social contracts that force the honouring of debt obligations. To minimize bad debts the central issue is to determine the borrower's affordability and/or ability to pay off their loans.

Traditionally, affordability was determined by assessing the households ability to pay by subtracting all debt obligations from a regular source of income and by determining the disposable income and its ability to service a housing loan. Pillay (2005) is of the opinion that in developing economies, behavioural and attitudinal factors, together with more flexible collateral requirements, can determine the credit risk and profile of borrowers.

A model for credit assessment points to the formula of three components that play a role in the calculation of credit risks. These include:

i. ability to pay (affordability, income to determine disposable income;

ii. collateral (property, pension, insurance, savings, subsidies etc); and

iii. behaviour and attitude towards credit (savings record, municipal service payment record, housing aspirations, compliance with law and order, attitude towards housing credit).

The most popular approach in South Africa in analysing affordability is the ratio approach that considers the percentage of income that is expended on housing. As a rule of thumb, one week's salary equals one month's rent or mortgage payment, which leads to the popular belief that not more than 25 percent of a households' income should be allocated toward rent or mortgage payments[60]

5.1.6 LIQUIDITY OF FINANCIAL MARKETS

Developing countries whose economic policies are not sound or are based on market principles, are often affected by inflation in an adverse way. In South Africa, economic policies have been a strong influence on macro-economic indicators61 and inflation has been brought down from 14.7% (1980-1989) to 7.2% (1995-1999)62. Currently, it is in the region of 4% with strict inflation targets of between 3-6%. In South Africa, although the Central Bank has maintained strict inflation targeting, exogenous factors - such as natural disasters eg. droughts, earthquakes, etc - and political instability in neighboring states, has placed the currency under considedrable pressure and has had a negative impact on international trade.

For developing economies, interest rates and credit policies need to be sound and well managed to promote investment. The theory here is that the more savings accrued by government from the proceeds of privatization, or by individuals in private bank accounts, the greater the ability of the financial system to invest in infrastructure, providing the impetus for growth and expansion of the low-income housing market.

The Register of Co-operatives, which in the early 1980s forced banks to compete on the basis of price and interest rates, was abolished and later replaced by the Banks Act in 1996, which regulates and regularises the local banking system (Pillay:2002:77).

The outlook provides the necessary investor confidence and improves South Africa's sovereign rating.

60 Pillay 2002, Garnett 2000

61 As referenced in the first chapter on economic indicators and issues of interest rate fluctuations

62 South African Reserve Bank Report on Monetary policy

5.1.7 FINANCIAL INFRASTRUCTURE

Renaud (1999) points out that in more regulated markets where governance and corporate behaviour is a priority, financiers are more willing to invest, and their risk appetite is reflected in the pricing of their products. The Central Bank plays a vital role in many countries in regulating, supervising and monitoring banking institutions. This ensures that banks act in a responsible manner and that deposits made by the public are safe. In South Africa, both global competition and internal regulatory control, have impelled a sizeable rollback of retail banking services (Baumann, 2001:16).

Efficient payment systems are also important components in the housing finance system. Timely payments and the transfer of payments to third parties via an efficient payment system is a pre-requisite for a more sophisticated housing finance system. This factor gives the investor the confidence that he will receive a return on his investment on time, without spending additional resources on special recovery methods (Hendler and Pillay, 2002:8).

5.1.8 ACCESS TO CREDIT

Lack of access to credit hampers the delivery of affordable housing. Housing finance from financial institutions is not widely available for primary or secondary transactions in black townships, with the exception of the privately developed submarket.

Even where lending is taking place, the indications are that foreclosures are proportionately high. This reflects a high level of economic vulnerability in township households. In addition, experience indicates that, in the event of foreclosure, realisable value is low, resulting in higher losses on default. The process of foreclosure and the sale and execution is also more uncertain and often time consuming. This increases lender reticence in these areas. Accordingly, there is a need to introduce some risk sharing mechanism that can limit.

5.2.9 LOAN INSTRUMENTS AND RISK PRICING

The pricing of loans for housing is largely determined by two factors:

i. the cost of funding; and,

ii. the risk of lending in the different market segments. South Africa still experiences problems with evictions and foreclosing of mortgage loans and, as a result, the cost or interest rates to individuals in the low and moderate-income categories is much higher. Risk based pricing in this market can vary between 4% and 13% up on prime rate for secured loans and up to 43% on unsecured loans[63]. The interest rate, the terms and the collateral arrangements for smaller loans, promote incremental housing as opposed to ownership or free standing units. Further, the cost of blending the subsidy with credit is perceived by lenders to

63 A. Pllay report on housing finance, 2003

be too high. Until recently, less than 10% of the national subsidy allocation was linked to credit[64].

5.2.10 POOR ACCESS TO HOUSING FINANCE AND THE COST OF CAPITAL

Given South Africa's past experience with credit risks in mortgage lending, it was inevitable that the banks would use other methods or alter the credit criteria to ration credit lending. In cases where subsidies are freely available from government, and where a loan component is required to complete the funding package, pricing or risk problems to the lender do occur. In this respect it should be assessed whether the loan portion was accessed at any given price or interest rate. The consequence of poor access to housing finance is a negative impact on housing affordability. With a worsening of income distribution has come a housing shortage for people with very low incomes contributing to a rise in homelessness. Here both the cost of the end product, as well as the cost of accessing finance, is considerably higher.

This is true for South Africa, where risk-pricing drives up the costs: a developer or an aspirant homeowner must pay from private sources. Therefore, affordability plays a significant role in improving the housing situation[65]. The high cost of finance delays the homeownership process[66]. The time taken to enter the real estate market as an owner is longer. Developers are an important component to the housing delivery process and if their access to finance is constrained, then long building periods can be experienced. This will increase the backlog situation, as delivery is unable to keep up with the demand[67].

5.2.11 CREDIT RISK

Before 2005, when government introduced a new subsidy arrangement, one of the key features in the market was the near absence of deposits for housing purchases. The US experience in the field of default management suggests that where there is a component of equity in the mortgage loan structure, the home-owner is more likely and more willing to cooperate in the event of unemployment. In South Africa low-income groups have little understanding of housing investment or how to realise the value of a house as an asset. As a result, the majority of potential buyers are reluctant to enter the market. Credit risks are still plagued by the culture of non-payment rather than a sense of obligation and responsibility to service debt.

Summary
In South Africa, the upper end of the mortgage market has experienced exceptional growth and returns on investments. Two

64 Report from the DoH website

65 Adebayo and Adebayo, 2001:1

66 Please refer above on how the mortgage transfer process works

67 Hendler, 1993:3

factors are mentioned as the main reasons for this housing boom:

i. historically low interest rates, and low inflation, and

ii. the strong performance of property because of underperforming asset classes such as equities.

New home buyers took out bigger loans, while existing home owners increased their mortgage loans to turn capital appreciation into cash for consumption purposes. But this did not translate in to a trickle down effect on the lower end of the market.

Even though many analysts believe that interest rates are at its lowest levels since the 1990s, they are, comparable to other developing economies, still exceptionally high. It is difficult to develop an economy where the cost of capital is too expensive to the majority of its citizens. Without access to basic financial and banking services, the majority of citizens will be cut off from financial services vis-à-vis, loan financing and savings, and they will be excluded from participating in the wider economy.

CHAPTER SIX

THE REGULATORY INFRASTRUCTURE AND MICRO-FINANCE FOR HOUSING

6.1 REGULATORY MECHANISM

The regulatory infrastructure influencing housing finance in South Africa is the South African Reserve Bank, Micro Finance Regulatory Council and National Home Builders Registration Council. The main objective of regulation should be to achieve a higher degree of efficiency, systemic stability and safety and soundness of financial institutions and consumer protection in the economy.

6.1.2 THE HOUSING MICRO LENDING INDUSTRY

Micro-lending is one of South Africa's fastest growing industries. The industry can be characterised by two disparate groups: namely, those that are registered and those that operate in an unregulated environment. The difference between the two groups is that the registered group is monitored, whilst the other is not. The size of the unregulated market is relatively unknown.

The latter is also notorious for violating the rules and regulations of the industry, in that exorbitant interest rates are charged to borrowers and ATM cards and pin codes are used as collateral. The regulated industry, on the other hand, has to abide by prescribed rules to benefit from the exemptions to the Usury Act. Interest rates for products range between 26% per annum to 5 % per week. However, studies show that the effective interest costs are substantially higher, as additional charges, such as credit life, administration, and retrenchment insurance, mostly are added to the price of those loans. Effective interest rates higher than 100% per annum are not uncommon.

6.1.3 DEVELOPMENTS IN THE MICROFINANCE HOUSING MARKET

Microfinance is a way to help low and moderate-income households meet their shelter requirements. The features of microfinance - such as small incremental loans, short repayment periods, market rates and innovative forms of collateral, such as peer group lending and alternative forms of titles of land – do, however, present challenges in the provision of housing finance.

In South Africa, this industry is experiencing a difficult recovery due to the demise of Unifer and Saambou banks during 2001 and 2002. These two banks were key to mainstreaming microfinance for housing. They extended micro-loans, credit and savings to low--income households that were otherwise cut off from the main stream financial services.

At a national level, sources of capital to housing lenders are limited, and lenders are, for the most part, reliant on primary sources of funding. Most institutions cannot leverage their balance sheet because of their poor capital adequacy ratio. The level of equity in the business is low and cannot not help in securing secondary funding. The South African Reserve Banks' September 2004 stability review report, puts the total credit market in South Africa at more than R400 billion. Micro loans constitute between 4.5-5% of this figure. Of the R18-20 billion worth of micro loans, some 11% is disbursed for housing purposes[68].

68 NHFC Housing Microfinance Review, March 2005

6.1.4 THE MARKET SIZE OF THE REGULATED INDUSTRY

As of 31 August 2004, 1777 micro lenders were registered with the Micro Finance Regulatory Council[69]. The increase from 1300 in May 2003 is largely attributable to the successful prosecution of a number of unregistered lenders. The registered micro lenders comprise 9 banks, 6 public companies, 275 companies, 1371 close corporations, 69 trusts, 21 section, 21[70] companies and 26 co-operatives. Although close corporations constitute the bulk of micro lenders they only have 2.9% of the market share. The nine banks have 47.8% of market share[71]. A number of major small and medium enterprises and banks are entering the microfinance housing market. This has not only resulted in a growth in the size and shape of the sector but it seems to have promoted a culture of product experimentation.

69 NHFC Housing Microfinance Review, Vol. 2 Issue 7

70 Companies operate on an non-profit basis

71 NHFC Microfinance Housing Review, Vol. 2, Issue 7

CHAPTER SEVEN

CONCLUDING REMARKS

Housing finance mechanisms and reforms in South Africa between 1994 (Record of Understanding) and 2005 Financial Sector Charter's (Memorandum of Understanding) reflects a better understanding and willingness to deal with the management of risks in both the public and private sectors. Building capacity for financial intermediation in the housing sector is a responsibility of all, if we want to expand our outreach and access. Borrower education is the responsibility of all players in the market as a way of managing risks. The type and level of borrower education must reflect the current risks in the market. It is important to educate and empower consumers, potential borrowers, and existing borrowers about their role, responsibilities and obligations as a homeowner or as an aspirant home buyer and to recognise the value of their assets.

The majority of lending that did occur was of an average loan size of R80 000 and above. The Mortgage Indemnity Fund intervention did little to facilitate lending to the poorer segments of the housing market. Increasingly, and partly as a result of the Mortgage Indemnity Fund intervention, there is a recognition that mortgage loans are not an appropriate lending mechanism for this segment of the market. However, more appropriate mechanisms have not, as yet, been identified. While this was not a direct objective of the Mortgage Indemnity Fund or under its direct control, it is a significant weakness in the system that must be addressed. Banks and developers should be encouraged to identify more appropriate mechanisms in this respect. From the view of the mainstream banks, only ABSA (October 2005) introduced a new home loan product that virtually made it possible for everyone with a joint income of between R1500 and R7500 to access an affordable 100% mortgage bond. The product called "MyHome" includes a five-year fixed rate option and the qualifying criterion is based primarily on proof of income.

This means that borrowers do not have to be formally employed. This is squarely in line with the requirements of the Financial Services Charter that expects financial institutions to make it possible for all South Africans who can pay off their debts, to own a home. According to Luxien Ariyan[72], banks have not been innovative. In fact, he is of the opinion that banks

72 Dr Luxien Ariyan was part of the drafting team of the Community Reinvestment Bill and also part of government team of negotiators on the Financial Services Charter

have not honoured their bilateral agreements with government from the Record of Understanding to the Memorandum of Understanding. "Financial Sector Charter lacks legislative teeth, if the banks fail to meet their targets there is nothing the government can do", said Ariyan.

There is no doubt that more of these appropriate housing products should be made available so as to create viable working residential areas, with access to social services and economic opportunities. In addition, lending mechanisms appropriate and accessible to the lower segments of the housing market must be developed. The private and public sector must be encouraged to work together to develop and explore options in this regard.

The normalisation of the historically non-performing loans and properties in possession must continue and be supported. Servcon and Thubelisha must be actively supported by both government and the banks. The overwhelming cause of the original default was economic: loss of jobs through retrenchment/redundancy and other social issues that had an impact; or loss of one partners' income (death, illness, divorce, abandonment). The majority of Servcon's clients face economic hardship. Evictions are carried out where people refuse to join the programme (sign an agreement and start paying) or where they defaulte on an agreement.

Eviction is a long process. Of concern, is the widespread disrespect for the due process of law and in many cases an active defiance where the Sheriff is prevented from carrying out his duties. It is extremely difficult to get the police and or prosecutors to investigate criminal charges against people who have illegally reoccupied properties. Improved co-operation between the various role players - attorneys, sheriff, police and security guards - has improved the situation (about ± 78% success rate).

One of the problems inhibiting the flow of finance into housing development is the absence of a vibrant secondary market; an environment that needs to encourage individuals as well as institutions to invest. The main problem to date has been that neither government nor private sector banks, investors or developers, have been able to deliver housing through the primary or secondary property market processes, at the right price, size and volume to low and moderate-income earners. Initiatives, from both the private and public sectors, so far, have not found a way to normalise the construction and financing of low and moderate-income housing under current market conditions.[73] To some extent government agencies have made some strides. Their impact is expected to accelerate as the government currently looks to expanding the mandates of these entities to ensure adequate and improved access to low income housing finance.

73 A. Pillay report 2003

CHAPTER EIGHT

LESSONS AND RECOMMENDATIONS FOR DEVELOPING MARKETS

South Africa is in the privileged position of having clear policy directions but some policy instruments still impede the delivery of housing finance. It is evident that housing and land policies have significantly adjusted over the past ten years. A process of review in response to an assessment of its impact and ongoing evaluation is paramount.

South Africa is leading by example in developing markets through its housing finance delivery mechanism. Notably its capital subsidy scheme for the poor which has encouraged and compelled financial institutions to continue to serve the low- and moderate-income market through appropriate policies and strategies. The 2000 Centre for Scientific and Industrial Research national study on Unblocking Finance for Affordable Housing in South Africa, revealed that large commercial banks are unwilling to grant mortgage loans for less than R100.000. The primary reasons cited, according to the study are: the banks are primarily focused on maximising shareholder profits, and investing and engaging in high profit activities; and that the cost of administration for a smaller loan is too high.

With this in mind, the government introduced two key interventions: The Home Loan and Mortgage Disclosure Act and the Community Reinvestment Bill. The Act requires that banks disclose their reasons for not advancing a home loan or a mortgage to low-income earners. It aims to promote fair lending practices that require financial institutions to disclose information regarding the provision of home loans. The Bill on the other hand. compells all financial institutions to engage in the provision of mortgage financing to the lower end of the market. On realising the implications of the Community Reinvestment Bill, the banking sector reacted with alarm by offering a 10-year voluntary initiative to the value of R42 billion aimed at providing finance to low-income earners with stable incomes in excess of R1 500 per month and less than R 7 500 per month. The initiative came into effect on 01 January 2004. The government responded by shelving the Bill though one is of the opinion that promulgation was not preclusive. The comfort is that the Bill remains an important document that can be resuscitated at any point should financial institutions fail to fulfill their commitments and obligations.

The State housing subsidy programme was designed to provide subsidised housing that would appreciate in value and become tangible assets for the poor. While the building of more than 1.8 million houses through the subsidy mechanism has stimulated the primary housing market, the subsidy has had the unintended consequence of distorting demand in the secondary housing market. This was due to the fact that many households were reluctant to take on debt where a "free" house may be a possibility and so postponed their entry into the market as a result, thinking that a fully subsidized house may still come their way.

The government, at this point, introduced strategic interventions. Every beneficiary of state housing is now required to contribute either in monetary terms (R2479.00) or through sweat equity. The principle aim is to create responsible consumers as opposed to mere beneficiaries.

The government initially introduced an eight year resale restriction preventing beneficiaries from selling their houses for significantly less than the original cost. Given these limitations restricting even leigitimate homeowners from selling due to relocation or upgrading, the resale policies were revised to 5 years. Even this 5-year resale restriction may need reviewing at some point down the line so that an environment that supports the development of both the primary and secondary markets can be created.

The gap between income and shelter costs is very wide. If the cost of constructing new houses is not within reach for low-income earners, then revitalizing the existing stock can be an alternative option for improving housing finance. To address this, the Breaking New Ground Housing Strategy was introduced which collapses the subsidy system and creates a three-tier category of income groups for improved targeting methods. In the categorization, the hard core poor (income levels 0 - R1,500) receive the full housing subsidy of R28,000. The poor (income levels R1, 500 - R3, 500) also receive the full subsidy. A new subsidy band is created for affordable housing targeting the middle income level (those earning R3, 500 to R7,000 pm), for whom government pays a deposit.

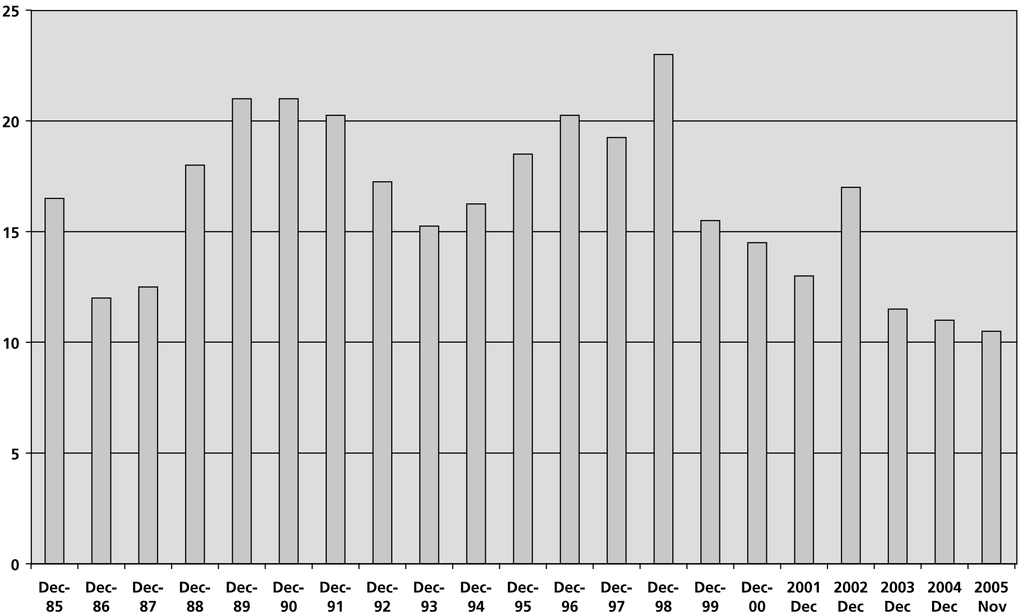
On product innovation, there has been no new inventions from the mainstream banks to improve the affordable housing market. Alternative lenders have been innovative by offering a range of products suitable for low- and moderate-income earners vis-à-vis rent, rent to buy, small mortgages, installment sale and housing micro loans. The supply is, however, not matching the ever-increasing demand. It must be said that wholesale financiers owned and capitalized by government have made some impact. Their effectiveness though was derailed by the reliance on primary sources of funding and their inability to leverage funding from secondary sources. Another issue is that these institutions have not operated long enough to adequately demonstrate their understanding of the affordable housing market.

Mortgage is still a relevant instrument in the provision of affordable housing. High mortgage cost not only curtail demand for housing but it also makes homeownership unaffordable. Until recently (2003), prime lending rates were as high as 17%, the current prime is 10.5%. High interest rates make consumers wary of accumulating debt while real disposable income is put under pressure. This illustrates the importance of stability in the macro-economic system. Economic instability results in uncertainty and raises interest rates. Under these conditions, the financial and economic system and particularly the housing finance system, is less able to mobilise adequate resources. High inflation affects the price of building materials coupled with low disposable incomes finding the critical mass of low-income earners unable to borrow or build from their own resources.

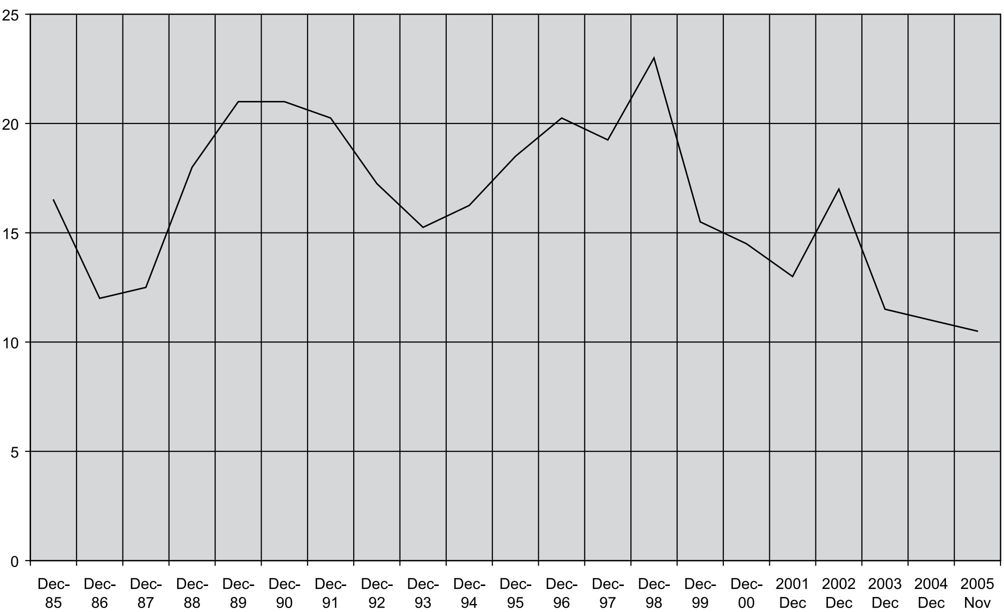
Lastly, government's ability to intervene with public-private partnership initiatives and the introduction of appropriate policies, should be acknowledged but the difficulty is implementation and enforcement. Governments' should be responsible for creating enabling environments for housing finance mechanisms. In cases where legislation, policy or strategy is impeding housing finance the government should intervene with remedial strategies.

LIST OF FIGURES

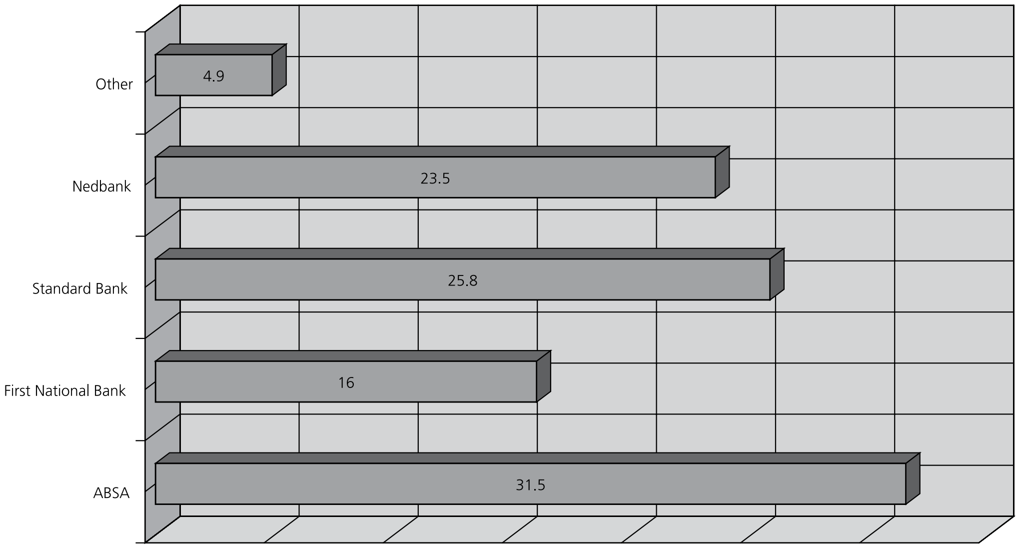
Interest Rates from December 1985 to November 2005



Interest Rate Fluctuations From December 1985 to November 2005



Banks Morgage Market Share in % Terms 2004/05



LIST OF TABLES

TABLE1: PRIME LENDING RATES FROM 1948-2004

CHANGE IN THE PRIME OVERDRAFT RATE OF BANKS

DATE	%
1948-12-31	4.50
1949-10-17	5.00
1952-04-01	5.50
1955-10-01	6.00
1958-06-01	6.50
1959-01-22	6.00
1960-08-19	6.50
1961-05-15	7.00
1962-01-01	6.50
1962-07-01	6.00
1962-12-01	5.50
1964-07-24	6.00
1964-12-12	6.50
1965-03-08	7.00
1966-07-15	8.00
1967-07-01	8.50
1968-09-10	8.00
1970-09-15	8.50
1971-05-01	9.00
1972-08-19	8.50
1973-04-16	8.00
1973-07-16	7.50
1973-11-15	8.00
1974-02-01	9.00
1974-06-01	10.00
1974-08-01	11.00
1974-10-07	12.00
1975-07-15	11.00
1975-08-11	11.50
1975-10-01	12.00
1976-06-22	12.50
1978-08-24	12.00
1978-09-15	11.50
1979-02-12	11.00
1979-03-24	10.00
1979-08-16	9.50
1981-01-24	10.00
1981-02-09	11.00

DATE	%
1981-03-24	11.50
1981-05-06	13.00
1981-06-24	14.00
1981-07-21	16.00
1981-12-17	17.00
1982-02-18	18.00
1982-02-26	19.00
1982-03-04	20.00
1982-11-01	19.00
1982-11-22	18.00
1983-01-24	17.00
1983-02-16	16.00
1983-03-07	14.00
1983-06-13	15.00
1983-06-24	16.00
1983-08-08	17.00
1983-08-15	18.00
1983-11-23	19.00
1983-12-14	19.50
1983-12-24	20.00
1984-03-23	21.00
1984-07-17	22.00
1984-08-04	25.00
1984-11-19	23.00
1984-12-17	24.00
1985-01-08	25.00
1985-05-06	24.00
1985-05-27	23.00
1985-06-24	22.00
1985-07-10	21.00
1985-09-02	19.50
1985-10-07	18.50
1985-11-04	17.50
1985-11-25	16.50
1986-01-24	15.50
1986-05-05	14.50
1986-08-23	14.00
1986-09-20	13.50

DATE	%
1986-12-24	12.00
1987-01-24	12.50
1988-01-21	13.00
1988-03-10	14.00
1988-05-05	15.00
1988-07-29	16.00
1988-11-03	18.00
1989-02-28	19.00
1989-05-08	20.00
1989-10-11	21.00
1991-04-02	20.00
1991-10-01	20.25
1992-04-01	19.25
1992-07-06	18.25
1992-11-23	17.25
1993-02-22	16.25
1993-11-01	15.25
1994-09-26	16.25
1995-02-22	17.50
1995-07-03	18.50
1996-04-29	19.50
1996-05-20	20.50
1996-07-01	19.50
1996-10-01	19.25
1996-11-21	20.25
1997-10-21	19.25
1998-03-09	18.25
1998-06-11	20.25
1998-06-30	22.25

DATE	%
1998-07-04	24.00
1998-08-31	25.50
1998-10-19	24.50
1998-11-09	23.50
1998-12-07	23.00
1999-01-11	22.00
1999-02-12	21.00
1999-03-08	20.00
1999-04-19	19.00
1999-06-25	18.00
1999-07-14	17.50
1999-08-08	16.50
1999-10-04	15.50
2000-01-24	14.50
2001-06-18	13.75
2001-07-16	13.50
2001-09-25	13.00
2002-01-16	14.00
2002-03-18	15.00
2002-06-14	16.00
2002-09-16	17.00
2003-06-13	15.50
2003-08-15	14.50
2003-09-11	13.50
2003-10-20	12.00
2003-12-15	11.50
2004-08-16	11.00
2005-04-15	10.50
2005-04-15	10.50

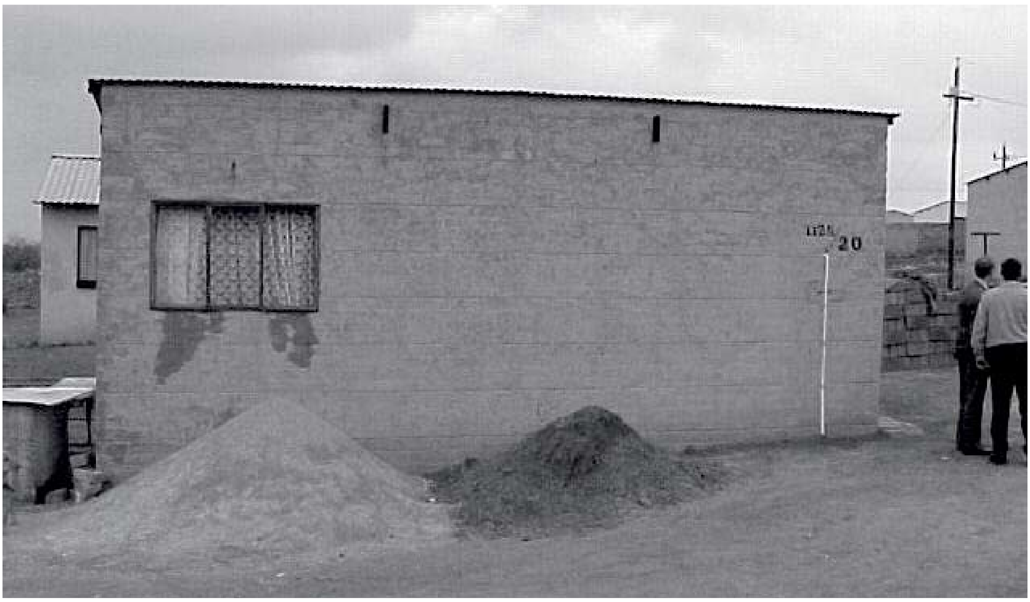
Source: South African Reserve Banks

ANNEX 1

PROJECT UNFAH FIELD TRIPS (SEPTEMBER 2000)

MORGAN PILLAY AND VUYISANI MOSS

MAIN CAPTION PICTURE 1: RDP HOUSE IN FREEDOM PARK



LOCATION

The above structure is located in Freedom Park, south of Johannesburg in Gauteng Province. This unit is located opposite a densely populated informal settlement/squatter camp-type development. This is an incomplete structure of the government's popular low cost housing scheme. This is also referred to as a core-housing structure. However, this area is not conveniently located for public transport and it is far from business areas and shopping centers.

SIZE

This is a typical 36m² structure, with two rooms, a kitchen and a possible flushed toilet.

SUBSIDY

The structure is wholly subsidised as these are exclusively low-cost housing scheme. Therefore the entire scheme is 100% linked to government subsidy. In this case the owner received a full R16 000 housing subsidy. Services are provided through the municipality at no additional cost.

BOND OR CFREDIT

The subsidy was supplemented by credit that has been accessed by the beneficiary.

INFRASTRUCTURE SERVICE

These units have electricity, piped internal water supply and full water borne sewerage system. The roads are tarred and stormwater drainage has been installed. There is an absence of amenities and recreational facilities.

ENVIRONMENT

The environment around does have esthetic limitations because it still has remnants of squalor conditions in its immediate vicinity. The surroundings are predominantly informal settlements. Economic environment is non-existent as there are businesses around not even street traders/ hawkers. Socially, there is an atmosphere that people have been distanced from their relatives, friends.

PURCHASE PRICE OF PROPERTY

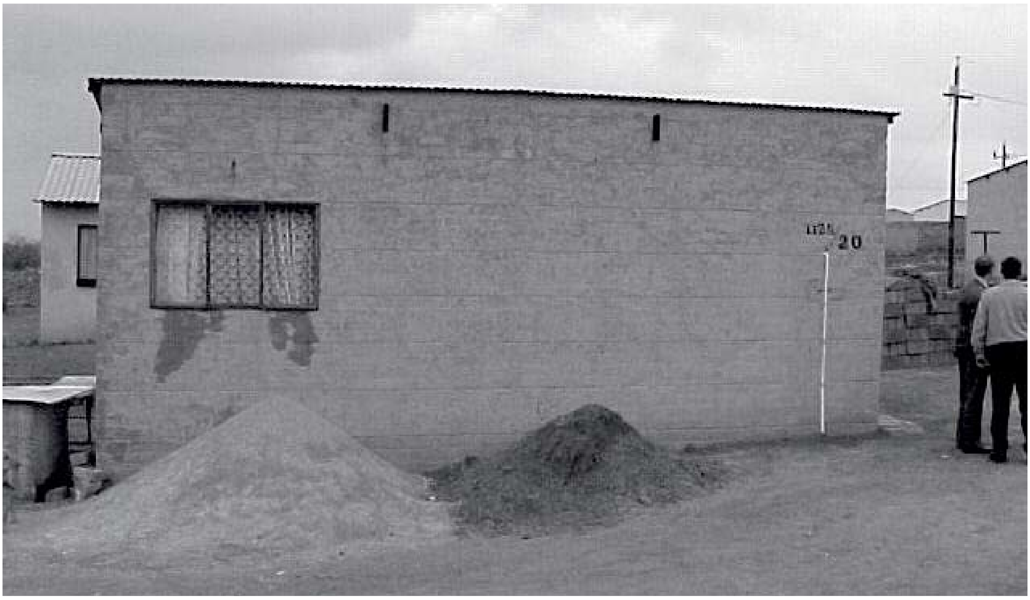
Owners of this house would be expected to pay an additional amount to complete the building. The estimated total cost of the structure is R25 000.00 or more. It will be supplemented by a joint loan/payment by the owners of +- R9000 + R16.000 subsidy).

LOCATION

The above structure is located in Freedom Park, south west of Johannesburg, in Gauteng Province. The unit is located opposite a densely populated informal/squatter camp-type of development. This is a complete structure of the government's popular low cost housing scheme. This is for a single family. The area is not conveniently located to public transport and it is far from business areas and shopping centers.

SIZE

The size of this structure is 30m², one room, lounge connected with the kitchen and a flushed toilet.



SUBSIDY

The structure is wholly subsidised as these are exclusively low-cost housing scheme. Therefore the entire scheme is 100% linked to government subsidy. In this case, the owner received a full R16 000.00 housing subsidy. Services are provided through the municipality.

BOND OR CREDIT

The subsidy was supplementary by the credit that has been accessed by the beneficiary

INFRASTRUCTURE SERVICE

These units have electricity, piped internal water supply and a full water born sewerage system. The roads are tarred and storm water drainage has installed. There is an absence of amenities and recreational facilities.

ENVIRONMENT

The surrounding environment has aesthetic limitations because it has the remnants of squalid conditions in its immediate vicinity. The surroundings are predominantly informal settlements. The economic environment is non-existent as there are no businesses around, not even street traders/hawkers. Socially, there is an atmosphere that people have been distanced from their relatives, friends etc.

PURCHASE PRICE OF PROPERTY

The owner of this house has paid R6000.00 as additional funding to complete the building. Therefore the total cost of the structure is R22 000. (R6000 loan + R16 000 subsidy.

LOCATION

The above shown structure is located in the Protea Glen area, in the West of Johannesburg in Gauteng Province. The unit is located in a purely middle class area. This is a typical new development structure that in most cases are extensions to old township settlements. This area is conveniently located because it is nearer to public transport, business areas, schools and shopping centers.

SIZE

The size of the structure is $40m^2$, with two bedrooms, a kitchen, lounge and bathroom and flushed toilet facility. It should also be noted that- this is a tile roofing kind of structure.

SUBSIDY

These are the partially subsidised kind of structures and are mainly for middle-income earners. The structure above may be estimated at a relative price of R60-70 000.00 including the land value and building costs.

BOND OR CREDIT

Subsidy or any form of allowance supplements of credit that has been accessed by the beneficiary to purchase a house.

INFRASTRUCTURE SERVICE

These units are constructed to areas that may be nearby townships and also ideally for physical infrastructure purposes, i.e. they are nearer to highways, taxi ranks, bus stops, shopping malls etc. This actually illustrates that these units are conveniently located as there may be 30-40km from the Johannesburg City Centre. This is characterised by the presence of amenities and recreational facilities.

ENVIRONMENT

The environment in which these units are constructed are conducive to residential living. The atmosphere is quiet, characterised by calm and tranquilty. Economic environment may be different from the usual found in the townships. Street traders and hawkers are rarely found. The social atmosphere though may not be that impressive as people in these kind of settlements hardly know each other let alone communication.

PURCHASE PRICE OF PROPERTY

As indicated above the average purchase price of such units ranges from R50 000.00 to R120 000.00 varies according to areas and sizes. The owner of the above structure has an allowance of R660.00 that helps him with loan repayments and monthly bond installment methods.

ANNEX 2

BACK TO MAIN MENU

Parties involved in the sale or purchase of a property

- Seller
- Estate agent
- Buyer
- Transferring Attorney (appointed by the seller to transfer the property to the buyer's name).
- Bond Attorney (appointed by the bank receiving the bond).
- Cancellation Attorney (appointed by the bank canceling seller's bond).
- The same attorney could be dealing with more than one or all of the above transactions.

Step 1
Purchasing a property

- The buyer and the seller sign the Offer to Purchase.
- The buyer applies for a bond with the bank

Step 2
Bond approval

- The bank approves the bond and advises the Bond Attorney to register the bond.

Step 3
Property transfer

- The seller advises the Transferring Attorney to transfer the property.
- The title deed and cancellation figures are requested from the bank which currently has a bond over the property.
- A statement of rates and taxes is requested from the local authority.

Step 4
Bond Attorney contacts Transferring Attorney

- The Bond Attorney advises the Transferring Attorney of the amount available for guarantees and requests the draft deed of transfer and guarantee requirements.

Step 5
Cancellation Attorney

- The Cancellation Attorney is requested to cancel the seller's bond on receipt of a guarantee for the amount owing.

Step 6
Transferring Attorney

- The Transferring Attorney receives the title deed and cancellation figures and sends a copy of the deed of transfer and the guarantee requirements to the Bond Attorney.
- The Transferring Attorney asks the buyer and seller to sign the transfer documents.
- The buyer pays the transfer costs and the Transferring Attorney then pays the rates and taxes and transfer duty.

Step 7
Bond Attorney

- The Bond Attorney prepares the bond documentation together with the relevant account.
- The buyer signs the documents and pays the costs.
- The Bond Attorney prepares and issues the necessary guarantees, forwards them to the Transferring Attorney and prepares the Bond Documents for lodging at the Deeds Office.

Step 8
Transferring Attorney

- Once the Transferring Attorney has received the guarantees, they are forwarded to the Cancellation Attorney.

Step 9
Cancellation Attorney

- The Cancellation Attorney obtains a consent for cancellation from the bank which holds the seller's bond.

Step 10
Documents prepared for the Deeds Office

- After all the documentation has been signed and the costs paid, the transfer, new bond and cancellation bond documents are prepared by the respective attorneys for lodging with the Deeds Office.

Step 11
Deeds Office

- All the documents are lodged simultaneously in the Deeds Office by arrangement with all the attorneys concerned.
- The Deeds Office takes approximately two to three weeks to check the documents before they are ready for registration by all the attorneys on the same day.

Step 12
Bank pays loan

- On the day of registration, the bank pays out the loan in accordance with the guarantees issued.
- Allow at least three months for the registration and transfer of the bond.
- Factors that delay the registration of a bond
- Failure by the seller and/or buyer to provide personal information.
- Failure by the seller to provide details of the bank holding the existing bond.
- The existing bondholder delaying/not providing cancellation figures and title deeds to the Transferring Attorney.
- Delay in receiving rates figures (local authority) and/or clearance certificate (Transferring Attorney).
- Failure by the buyer to pay a deposit (if required).
- Delay in the provision of guarantees.
- Failure by the buyer to pay transfer and/or bond costs on time.
- Delay the seller in signing transfer documents.
- Delay by the buyer in obtaining government capital subsidy approval/employee income subsidy documents for new bondholders and failure to comply with other bank requirements.
- Delay by the buyer in signing transfer and/or bond documents.
- When the Bond Attorney, Transferring Attorney and Cancellation Attorney are three separate firms.

ANNEX 3

REPUBLIC OF SOUTH AFRICA

COMMUNITY REINVESTMENT (HOUSING) BILL, 2003

MINISTER OF HOUSING [B 2003]

TABLE OF CONTENTS

BILL

To provide for the meeting of specific minimum targets and standards by housing finance institutions in providing home loans to low and medium income level borrowers and to provide for matters connected therewith

PREAMBLE

WHEREAS in terms of section 26(1) and 26(2) of the Constitution:

a. Everyone has the right to have access to adequate housing; and

b. The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

AND WHEREAS in section 4 of the Schedule to Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) the following are listed as unfair practices:

"(b) "Red-lining" on the grounds of race and social status; and

(c) Unfair discrimination in the provision of housing bonds, loans or financial assistance on the basis of race, gender or other prohibited grounds;"

AND WHEREAS section 5 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) provides for a person to be furnished with written reasons for any action which adversely affects his or her rights;

AND WHEREAS the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) ensures that the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights;

AND WHEREAS sections 2(1) and 3(1) of the Home Loan and Mortgage Disclosure Act, 2000 provide that all financial institutions that provide home loans must disclose information regarding the number of applications received, approved, declined, disbursed and closed;

AND WHEREAS there is now also a need to ensure that all housing finance institutions that provide home loans should adequately meet the aspirations of low and medium income level borrowers;

AND WHEREAS it is not the intention of this Act to promote, in any way, unsafe and unsound business practices among housing finance institutions in providing home loans;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:

1. DEFINITIONS

(1) In this Act, unless the context indicates otherwise:

"Act"
includes regulations promulgated under this Act;

"borrower"
means any person that has already applied, is in the process of applying, or is planning to apply for a home loan, whether or not the application is successful;

"business strategy"
means a document that provides information (including the delineation of quarterly indicators and milestones) on how a housing finance institution intends to improve its performance under this Act;

"Department"
means the Department of Housing;

"disparate impact"
means the adverse effect on a borrower of any practice or policy that cannot be justified on the basis of safe and sound business practice;

"home"
means any residential structure, or part thereof;

"home loan"
means any advance to a borrower for constructing, purchasing, extending, renovating or in any other way improving a home or to refinance a loan taken for these purposes;

"housing finance institution"
means any registered institution that originates or holds home loans;

"low income level"
means a range of borrowers' monthly incomes as prescribed;

"medium income level"
means a range of borrowers' monthly incomes as prescribed;

"Minister"
means the Minister of Housing;

"niche market retail lender"
means any housing finance institution which has as a primary business the provision of home loans to low and medium income level borrowers;

"Office"
means the Office of Disclosure established in terms of the Home Loan and Mortgage Disclosure Act, 2000 (Act No. 63 of 2000);

"prescribed"
means set by regulation by the Minister, by notice in the Gazette;

"project loan"
means any loan or advance to a developer or such other entity for a housing project primarily for low and medium income level borrowers;

"public-private partnership"
means a venture established jointly by government and any number of housing finance institutions to promote investment

in housing for low and medium income level borrowers;

"redlining"
means turning down home loan applications mainly because of the geographic location of the homes for which finance is required;

"standard"
means the performance, conduct and level of compliance as prescribed for housing finance institutions in making home loans;

"target"
means that proportion of a housing finance institution's home loan book as prescribed for disbursement either directly or indirectly to low and medium income level borrowers; and

"wholesale lender"
means any registered institution whose primary business is providing funding to niche market retail lenders.

2. SCOPE AND APPLICATION

The provisions of this Act apply to all housing finance institutions.

3. PRINCIPLES

(1) In meeting the needs of low and medium income level borrowers, housing finance institutions must:

a. Invite and encourage home loan applications from low and medium income borrowers through positive marketing and advertising.

b. Deal with borrowers in a transparent and equitable manner during all stages of the home loan application process.

c. Encourage savings and provide meaningful incentives to those who save.

d. Establish fair, equitable and transparent criteria to be applied in the processing of home loan applications.

e. Innovate and generate appropriate housing products for low and medium income borrowers.

f. Not lend without due regard to repayment ability.

g. Not approve any home loan application where the principal amount is greater than the amount needed for housing purposes.

(2) All housing finance institutions, and related government institutions, must establish consumer education programmes.

(3) Government, through the Minister of Housing and other relevant Ministers, must:

a. Prioritise the establishment and maintenance of an environment that is conducive to housing finance institutions meeting their prescribed targets.

b. Introduce measures that aid and expedite the resolution of housing management problems.

4. PERFORMANCE AND RATINGS

1. In pursuing the prescribed targets contemplated in (4)(a) below, housing finance institutions may opt for one or any combination of:
   a. Providing home loans;
   b. Providing project loans;
   c. Providing funding to niche market retail lenders;
   d. Providing funding to wholesale lenders;
   e. Providing funding to social housing institutions
   f. Providing funding to public-private partnerships;
   g. Purchasing wholesale lenders' securities and debt issues; and
   h. Any other option which is acceptable to the Office of Disclosure.
2. Housing finance institutions may only opt for (c) to (h) above if the recipient of the funding is approved by the Office of Disclosure.
3. The criteria for the approval referred to in (2) above is to be prescribed by regulation.
4. The Minister must, by regulations, on recommendation by the Office of Disclosure, prescribe:
   a. Targets and standards applicable to housing finance institutions after consulting with them;
   b. An evaluation instrument that includes the following criteria:

i. Number and Rand value amount disbursed in respect of home loans including:
   - All income and particularly low and medium income;
   - All geographical areas and particularly previously disadvantaged areas

ii. Number and Rand value amount in respect of project loans;

iii. Number and Rand value amount in respect of funding to niche market retail lenders;

iv. Number and Rand value amount in respect of funding to wholesale lenders;

v. Number and Rand value amount in respect of funding to social housing institutions;

vi. Number and Rand value amount in respect of funding to public-private partnerships;

vii. Number and Rand value amount of wholesale lenders' securities and debt issues purchased;

viii. Innovation in respect of home loans for the low and medium income level markets;

ix. Performance in respect of other aspects of providing housing finance to low and medium income level borrowers; and

   c. A rating model that measures a housing finance institution's performance in meeting the targets and standards as prescribed. The model must incorporate five categories:

i. Outstanding

ii. Very satisfactory

iii. Satisfactory

iv. Unsatisfactory

v. Substantial non-compliance.

5. OBLIGATIONS OF HOUSING FINANCE INSTITUTIONS

1. In serving the housing finance needs of low and medium income level borrowers, housing finance institutions must:

   a. Meet or exceed the targets and standards as prescribed;

   b. Not employ any practice or policy that leads to any form of redlining;

   c. Apply clear criteria when investigating the creditworthiness of borrowers.

   d. Communicate transparently and expeditiously during all stages (including the outcome) of the home loan application process;

   e. Furnish reasons in writing for rejected applications.

2. In line with the Promotion of Access to Information Act, 2000, a housing finance institution must not:

   a. Withhold from a borrower information or services regarding the home loan process, including credit availability and application procedures;

   b. Withhold from a borrower the reasons for declining an application for a home loan;

   c. Withhold on request from the Office of Disclosure the underwriting methods and criteria used in assessing such borrower's application.

6. FUNCTIONS OF THE OFFICE OF DISCLOSURE ESTABLISHED BY SECTION 4 OF THE HOME LOAN AND MORTGAGE DISCLOSURE ACT, 2000 (ACT NO. 63 OF 2000)

1. The Office must, in addition to its functions under the Home Loan and Mortgage Disclosure Act:

   a. Outline the reporting requirements of housing finance institutions as prescribed;

   b. Collate data as contemplated in section 4(4)(b) above and any other data as may be prescribed;

   c. Verify and authenticate such data where possible and necessary;

   d. Examine and evaluate such data as prescribed;

   e. Monitor the progress of housing finance institutions in meeting their obligations in terms of section 5 of this Act and intervene where necessary to ensure compliance as prescribed;

f. Propose punitive measures as prescribed;

g. Propose incentives and rewards as prescribed;

h. Report to the Minister and to the public; and

i. Request and review a business strategy of any housing finance institution that has not met, or appears unlikely to meet the prescribed targets. (ii)

7. REPORTING REQUIREMENTS

1. Every housing finance institution must, on an annual basis, submit a report to the Office as prescribed.
2. Such a report must be furnished to the Office within 60 days from the end of the reporting period.

8. WRITTEN ASSESSMENT

1. After examining a housing finance institution's report as set out in section 7(1) the Office must prepare a written assessment of the housing finance institution's performance in respect of meeting the targets and standards, as prescribed

9. REPORT TO MINISTER

1. The Office must include in its annual report to the Minister, a section outlining the actions it has taken to carry out its responsibilities in terms of this Act.

10. REGULATIONS

1. The Minister must, after consulting with the Ministers of Finance, Justice and Trade and Industry, make regulations regarding:

a. Income bands for low and medium income levels as contemplated in the definitions of "low income level" and "medium income level";

b. Criteria for the approval of recipients of housing funding by the Office of Disclosure as contemplated in section 4(3);

c. Targets and standards as contemplated in section 4(4)(a);

d. An evaluation instrument as contemplated in section 4(4)(b);

e. A rating model that measures a housing finance institution's performance as contemplated in section 4(4)(c);

f. Reporting requirements and data as contemplated in section 6(1)(a) and (b);

g. Punitive measures and incentives as contemplated in section 6(1)(f) and (g);

h. Minimum Rand value of a housing finance institution's home loan book as contemplated in section 11(1)(b)(i);

i. Minimum duration of a housing finance institution's existence as contemplated in section 11(1)(b)(ii);

j. Any matter which is necessary or expedient to prescribe in order to achieve or promote the objectives of the Act.

11. EXEMPTIONS

1. The Minister may exempt a housing finance institution or a category of housing finance institutions, from any or all of the requirements of this Act:

a. For a period not exceeding a year, if it requires time to adjust its systems or procedures in order to comply with the provisions of this Act; or

b. For any specified time, if:

i. Its home loan book does not exceed the minimum Rand volume as prescribed for the purposes of this Act; or

ii. It has been in existence for a period that does not exceed the minimum duration as prescribed for the purposes of this Act.(iii)

12. OFFENCES AND PENALTIES

1. A housing finance institution is guilty of an offence each time that it contravenes or fails to comply with any provision in section 4 and section 5 of this Act; and
2. A housing finance institution found guilty of an offence in terms of section 12 (1) is liable for a fine not exceeding R500 000,00.

13. SHORT TITLE AND COMMENCEMENT

This Act is called the Community Reinvestment (Housing) Act, and takes effect on a date determined by the President by proclamation in the Gazette.

This report examines the housing finance mechanisms in South Africa. It report looks at the macro-economic conditions and legal environment in which housing finance is operating. It discusses the role of the state, private sector, multilateral institutions and other agencies in the development of housing finance mechanisms. It reviews a variety of instruments and measures to facilitate access to housing finance and for implementation of different housing finance schemes. It demonstrates that how policy development and environment can shape the housing finance system and its evolution. It examines the different commercial banking approaches, instruments and products to low income housing finance, and their challenges and constraints. It explores how the regulatory infrastructure and environment and institutions created by the state can carry some of the intermediary risks associated with extending loans to the lower income housing market.

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UNITED NATIONS HUMAN SETTLEMENTS PROGRMME
P.O. Box 30030, GPO Nairobi 00100, KENYA
Telephone: 254-20-7623120; Fax: 254-20-7624266/7 (Central Office)
E-mail: infohabitat@unhabitat.org; Website:http//www.unhabitat.org