

# The semantic and epistemic divide in South Africa's state subsidised housing market: Understanding off-register property sales

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**Key words:** Off-register property sales; tenure security; cadastral legibility; state-subsidised housing; postcolonial land governance; housing transactions

## SUMMARY

We examine the disjuncture between how individual titling of state-subsidised housing is designed and administered by the South African state and how ownership is understood, navigated and enacted by purchasers. Since 1994, more than three million fully subsidised houses have been delivered to redress prior racial exclusion from property ownership, premised on the assumption that registered title would secure tenure and enable intergenerational wealth. Despite this ambition, this assumption has been persistently undermined by the widespread practice of off-register transactions, in which subsidised houses are bought and sold outside the Deeds Registry. Drawing on a qualitative case study in the Western Cape, the paper examines how purchasers engage with property acquisition and ownership over time, deliberately foregrounding household accounts. Off-register transactions are examined not as expressions of individual preference, but as responses to how the formal property system is encountered in practice. Such transactions persist not because purchasers reject individual ownership, but because the formal system is experienced as administratively opaque, poorly sequenced and difficult to interpret in relation to everyday life events. Building on work on legibility (Scott), dead capital (de Soto), and epistemic justice (Fricker and Santos), the paper examines South Africa's cadastral regime as oriented toward administrative visibility and control. While this regime renders property visible and manageable to the state, it often fails to make ownership intelligible or actionable for first-time homeowners. In practice, buyers rely on social recognition, community witnessing and local validation to secure legitimacy, as ways of coping with its opacity. These practices may stabilise tenure in some contexts while generating normative tensions in others, including cases where lawful ownership is socially overridden. We conceptualise these dynamics as an epistemic divide between state-defined property forms and lived ownership practices, and argue that strengthening tenure security requires greater attention to the intelligibility and temporal sequencing through which existing cadastral systems are encountered in practice.

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# **The semantic and epistemic divide in South Africa’s state subsidised housing market: Understanding off-register property sales**

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## **1 INTRODUCTION**

Since 1994, South Africa’s state-subsidised housing programme has delivered more than five million housing opportunities, including three million fully subsidised houses through the Reconstruction and Development Programme (RDP) and its successor, Breaking New Ground (BNG) (Department of Housing, 2004; Huchzermeyer, 2001). This large-scale intervention was central to efforts to redress the profound spatial and socio-economic injustices created by Apartheid and colonialism (Ntsebeza & Hall, 2007; Walker, 2008). The underlying policy assumption was that registered ownership would deliver tenure security, promote asset accumulation and enable intergenerational wealth transfer. Despite the scale of delivery, this assumption has been persistently undermined by the widespread practice of off-register property sales, in which subsidised houses are bought and sold without registration in the Deeds Registry (Barry & Roux, 2016a; Melzer & Robey, 2020; Rust, 2023). These transactions operate alongside the formal cadastral system and produce enduring misalignment between registered ownership and lived occupation. This misalignment complicates land administration and governance, as official records and administrative practices increasingly fail to reflect on-the-ground tenure realities in low-income neighbourhoods, a pattern being increasingly documented by researchers, for example, Charlton (2013, 2018), Barry & Roux (2016) and Barry & Kingwill (2024).

Public and policy narratives have long portrayed such transactions as irresponsible acts by beneficiaries who ‘sell what they did not buy’, framing them as non-compliance with the subsidy conditions that forbid sale within a certain period, or the unlawful disposal of state assets, justifying calls for stronger enforcement and discipline (Bhengu, 2022; Department of Infrastructure, 2022; Gqirhana, 2015; Maromo, 2025). This narrative casts informal sellers as deviant or irresponsible, reinforcing a moralising policy discourse that obscures the structural drivers of off-register sales, including customary practices of succession, persistent poverty, unemployment and economic precarity. At the same time, it overlooks the experiences of purchasers who invest scarce resources in homes that may not be legally registered in their names. For buyers, such transactions entail significant risks, including potential eviction, limited legal enforceability of ownership claims, and exclusion from municipal services benefits tied to registered tenure (Barry & Roux, 2016a; Melzer & Robey, 2020; Rust, 2023).

For many, however, the risks do not actualise in negative effects, reinforcing the notion that off-register transactions are safe, when they are not.

In this paper, we shift attention from either bureaucratic concerns or moralised accounts of seller behaviour towards the experiences of purchasers, asking why off-register purchases persist within a housing system explicitly designed to deliver formal ownership. These transactions are situated within the everyday realities of first-time home ownership that is often at some distance from the law and administration thereof. The formal system is administratively opaque and conceptually inaccessible. Formal transfer procedures are widely experienced as costly, procedurally complex and unevenly implemented, particularly in subsidised housing contexts (Barry & Fourie, 2002; Watson, 2009). Some buyers are not even aware of them. In this context, ownership is frequently secured through socially recognised practices such as visible occupation, community witnessing and local validation. These practices are treated as pragmatic responses to the opacity of the formal property system rather than as rejections of formality. They provide buyers with immediate forms of legitimacy and protection in situations where formal registration is delayed, unaffordable or contested. Some buyers become aware of the legal fragility of their claims if they have heard of cases of misfortune, but many do not fully appreciate the risks. The paper engages with scholarship that treats property systems not as neutral technical instruments but as historically produced institutions shaped by power, language and normative assumptions (Barry & Whittal, 2016; R. Kingwill, 2014; Riles, 2004; Von Benda-Beckmann et al., 2006).

In postcolonial contexts, cadastral systems derived from colonial legal traditions, such as South Africa's Roman-Dutch framework, privilege written documentation, procedural sequencing and specialised legal knowledge (Hull & Whittal, 2017; Watson, 2009) and do not confront the realities of competing customs and practices, and fail to transform to accommodate them. While these systems succeed in rendering property intelligible and manageable to the state, they often remain difficult to interpret, navigate or use for first-time homeowners operating within constrained socio-economic conditions.

Building on James Scott's (1998) notion of legibility, the paper examines South Africa's cadastral regime as a historically rooted system that prioritises administrative visibility and control, while later legal discourses emphasised the asset-worthiness of private property, even of low-income households. While legibility enables the state to standardise, record and govern property, it can also produce forms of exclusion when the meanings, procedures and documentation through which ownership is recognised are not easily understood or accessed by intended beneficiaries. In this context, off-register transactions emerge not from a rejection of formality, but from attempts by first-time homeowners to secure practical and socially recognised tenure in a system they would otherwise not manage to navigate. Building further on Hernando de Soto's (de Soto, 2000) concept of dead capital and theories of epistemic justice advanced by Miranda Fricker (2007) and Boaventura de Sousa Santos (2014), the paper conceptualises the persistence of off-register transactions as reflecting a deeper epistemic misalignment between state-defined property forms and lived ownership practices. This condition is conceptualised as an epistemic divide between how property is known, recorded

and governed by the state, and how ownership is experienced, interpreted and secured in everyday life.

The sections that follow outline the policy and institutional context, describe the research methodology and present the empirical findings before returning, in the discussion, to the implications for land administration and housing policy.

## **2 CONCEPTUAL FRAMING: INFORMALITY, LEGIBILITY AND THE EPISTEMIC DIVIDE IN STATE-SUBSIDISED HOUSING**

Property systems are widely understood in land governance and legal anthropological scholarship as historically constituted institutional arrangements rather than neutral technical mechanisms. Ownership is not simply a legal status but a social relationship mediated through law, documentation and administrative practice, shaped by power, authority and normative assumptions (Riles, 2004; von Benda-Beckmann et al., 2006). Their effectiveness must therefore be assessed in relation to how they are interpreted, navigated and made meaningful in everyday life. In postcolonial contexts, colonial property regimes continue to shape normative and legal hierarchies of ownership. In South Africa, the cadastral and deeds registration system is rooted in Roman-Dutch private law (Badenhorst et al., 2010; Kloppers & Pienaar, 2014; van der Walt, 2008), shaped through what has been described as “the accretion of Dutch and English law at the Cape” (R. Kingwill, 2014), a legal tradition that subsequently came to structure property relations nationally. The resulting system is among the most detailed and procedurally demanding in the world (Badenhorst et al., 2010; Kingwill 2014, Hull & Whittal, 2017). While this rigour provides legal certainty for those able to operate within its technical requirements, it often sits apart from the relational and negotiated tenure practices that structure everyday property relations in many urban and rural settings (Barry & Fourie, 2002; R. Kingwill, 2014).

Scott (1998) concept of legibility provides a useful lens for understanding how such systems operate. Modern states seek to render complex social relations visible and governable by simplifying them into standardised forms that can be recorded, categorised and administered. In the property domain, cadastral systems perform this function by translating ownership into documentary artefacts and legal categories. While legibility enables state administration and coordination, it can also obscure local forms of knowledge by privileging administrative needs over lived meaning (Scott, 1998). Legibility to the state does not necessarily translate into intelligibility for users.

Debates on property formalisation and ‘dead capital’ further illuminate the limits of legibility-based approaches. While de Soto (2000) argued that formal title enables assets to be mobilised as capital by integrating them into legal and financial systems. Subsequent scholarship has shown that registration alone does not automatically deliver tenure security or economic inclusion. Where processes are fragmented, costly or difficult to navigate, title may exist without providing practical control or protection (Barry & Whittal, 2016) or many simply continue to be governed by customary norms adjusted to title (R. A. Kingwill, 2014). In state

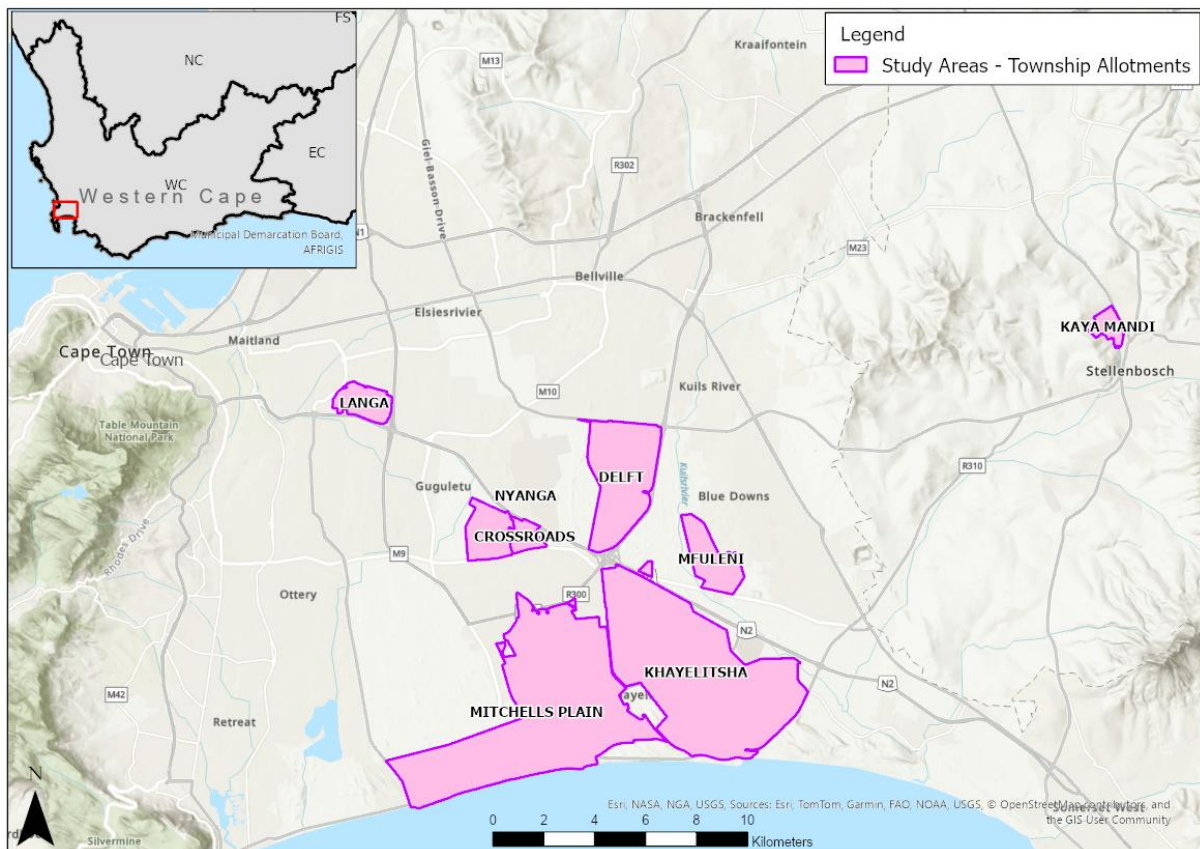
subsidised housing contexts, title deeds may be formally issued yet remain difficult to activate, interpret or rely upon in everyday transactions, particularly for first-time homeowners with limited prior engagement with the formal property system. In South Africa, informal property markets operate alongside, and often in tension with, formal housing delivery mechanisms (Charlton, 2013, 2018), creating persistent challenges for land administration, governance and urban management. Efforts to standardise land relations do not eliminate alternative tenure practices but may displace them into zones that become categorised as ‘informal’. It is within these zones that socially recognised, off-register transactions continue to occur in the subsidised housing sector.

Work on epistemic justice sharpens this critique by shifting attention from institutional form to questions of knowledge and recognition. Fricker (2007) conceptualises epistemic injustice as harm done to individuals when their knowledge, experiences and understanding of something (purchasing property in this case) is not acknowledged or codified into law. Santos (2014) highlights how dominant knowledge systems marginalise alternative ways of understanding social relations. Applied to property systems, these perspectives draw attention to how everyday interpretations of ownership, legitimacy and proof may be discounted when they do not align with formal legal categories. The result is a persistent disconnect between legal recognition and lived experience.

The concept of an epistemic divide is used here to capture this condition. It refers to a structural misalignment between state-defined property forms and the ways in which ownership is understood, enacted and secured in everyday life. This framing recognises that socially grounded practices through which ownership is validated and stabilised operate alongside the formal cadastral system in everyday life. These practices constitute parallel logics of legitimacy, rather than parallel systems of registration through alternative forms of recordal or property regimes. Our analysis does not advocate for the institutionalisation or formalisation of such practices. Instead, their persistence is treated as diagnostic, revealing the limits of a formal system whose design and operation remain poorly aligned with other realities. In this article, the phenomenon is explored with respect to first-time home ownership in low-income, state-subsidised contexts. Within this framing, off-register transactions are understood as rational and in many cases pragmatic responses to epistemic opacity rather than as acts of deviance or resistance. Buyers encounter a property system that is legally precise but difficult to interpret and navigate, requiring engagement with unfamiliar terminology, fragmented institutional responsibilities and procedurally complex transfer processes. In these conditions, social recognition, community witnessing and visible occupation become ways of securing practical legitimacy where formal mechanisms are delayed, inaccessible or uncertain. These practices coexist with the formal system and are shaped by it, rather than deliberately operating outside or against it.

### 3 METHODOLOGY

The study adopts a qualitative case study design focused on state-subsidised housing transactions, examined through multiple household cases. A processual logic of inquiry was used rather than fixed structures or points of reference in law or custom. Fieldwork was conducted between 2023 and 2025 in Cape Town and Stellenbosch. Research sites were not preselected but emerged through snowball sampling, as participants referred the study to other households that had purchased state-subsidised houses. This process generated a geographically dispersed set of cases, including households in Delft, Lower Crossroads, Mfuleni, Mitchells Plain, Kayamandi (Stellenbosch) and several sub-areas within Khayelitsha (see Figure 1).



**Figure 1: Study sites in Cape Town and Stellenbosch (Source: GIS Sub-Directorate, Western Cape Department of Infrastructure)**

In total, the study draws on twenty-six household interviews reflecting diverse and shifting tenure trajectories within South Africa's state-subsidised housing sector. These include households that purchased off-register and remained so, cases that were later regularised, transactions that moved from on-register to off-register arrangements and cases complicated by deceased estates. In several instances, households were not fully aware of the formal legal status of their transactions. While some participants engaged knowingly with off-register processes, others understood their purchases primarily through community-facilitated procedures and

locally recognised validation practices rather than through formal registration pathways. Early fieldwork indicated that restricting the sample to households that had knowingly purchased off-register would exclude experiences central to the research question, as some households entered into transactions facilitated by street committees or other community-based actors without understanding these as off-register in legal terms, while others moved between formal and informal arrangements over time. In response, the study included all purchasers of state-subsidised houses rather than classifying cases according to registration status. This enabled analysis of how ownership was understood, legitimised and navigated across different transactional pathways.

The study extended to twenty-one key informant interviews with municipal officials, conveyancers, Deeds Registry personnel, Non-Governmental Organisations and community leaders to contextualise institutional processes and governance dynamics. In this article, we are mainly concerned with household accounts.

Interview material was coded to identify recurring concepts, processes and practices relating to ownership, legitimacy and risk. Rather than treating off-register transactions as a fixed category, the analysis follows household trajectories across different temporal pathways. Household interviews were exclusively with purchasers. Sellers were not interviewed due to legal sensitivities that could potentially implicate them, and accounts of why properties were sold, therefore, reflect purchasers' understandings rather than sellers' own narratives. These accounts are treated analytically as secondary perspectives on seller motivations, rather than as direct evidence of seller intent. Household interviews explored transaction initiation, payment practices, documentation or witnessing, and participants' understanding of ownership, risk and legitimacy over time.

Analysis proceeded iteratively, allowing emerging themes to refine the interpretive focus and enabling attention to both continuity and change in how ownership is constructed, recognised and challenged in practice. Close attention was paid to language and vernacular expressions, recognising that key property concepts do not always map neatly across isiXhosa and English and that such semantic shifts are analytically significant for understanding how ownership is interpreted and enacted in practice. The first author is fluent in both languages, allowing interviews to be conducted without interpreters and enabling close attention to how concepts relating to ownership, proof and legitimacy were articulated across linguistic contexts. Credibility was strengthened through analytic triangulation across household trajectories, attention to exceptional cases, and sustained engagement with the field. The section that follows presents the empirical findings.

#### **4 FINDINGS: EVERYDAY RATIONALITIES OF OFF-REGISTER TRANSACTIONS**

Empirical findings are organised around four themes that focus on: how purchasers understand ownership, establish legitimacy and navigate risk as off-register transactions are produced,

stabilised, contested and reworked across social, administrative and legal domains within the state-subsidised housing sector.

#### 4.1 Everyday rationalities of off-register transactions

Purchasers commonly described buying a house as a complete transaction once payment had been made and occupation secured. Ownership was understood in practical and relational terms, grounded in possession. Possession was, in turn, understood in terms of social recognition rather than in formal registration. Participants consistently used the language of buying and selling, even where no written agreement existed, and no conveyancing took place. As a purchaser in **HH7 (Mfuleni)** put it: *“I paid the lady, and the neighbours saw. That is enough for us here”*. Payment, combined with social witnessing, was widely understood as constituting ownership in practice. Legitimacy at the point of transaction is typically established through locally recognised indicators, including the seller’s occupation of the house, confirmation from neighbours, the presence of witnesses, and, in some instances, the involvement of street committees or structures linked to the South African National Civics Organisation (SANCO).

Formal documentation was unevenly present and rarely regarded as decisive. Where documents such as identity documents or copies of title deeds were exchanged, they functioned primarily as a form of proof, albeit not always decisive and not understood in terms of formal instruments of legal transfer. In **HH6 (Delft)**, for example, a third-party intermediary facilitated the transaction and presented copies of the seller’s Identity Document and title deed, which made the sale feel ‘proper’ to the purchasers, even though ownership had not yet been formally transferred or registered at the time of the interview. Since social sanction is a key local social method of accountability (R. Kingwill, 2008), it is understandable production of official identity is mandatory. Purchasers often acted under conditions of urgency and constrained choice, and sometimes panic, where the need for immediate housing stability outweighed the perceived risks associated with delayed or uncertain formalisation. These pressures were evident across the cases and shaped how risk was assessed at the point of purchase. In **HH20 (Khayamandi)**, the purchaser paid the full purchase price before viewing the property, explaining: *“I didn’t want to finish the year without my own place. Even without papers, at least my children had a home”*. In such contexts, visible occupation and local acceptance provided the most intelligible basis for proceeding with a transaction.

Taken together, these practices reflect an everyday rationality in which ownership is constituted through action, recognition and use rather than through prior engagement with the formal property system. While registered title was generally recognised as desirable, it was not treated as a prerequisite for buying. In some cases, purchasers were aware of registration requirements but deferred engagement, imagining formalisation as something to be pursued later, should the need arise. In other cases, purchasers were not aware that registration was necessary at all, and understood payment and occupation, once socially recognised, to constitute ownership in full.

## 4.2 Hybrid governance and local authorising structures

Off-register transactions were rarely conducted in an institutional vacuum. Purchasers relied on a range of hybrid governance arrangements and local authorising structures to validate transactions, manage risk and resolve disputes (Barry & Kingwill, 2020). These included street committees, SANCO-linked civic structures, neighbourhood elders and trusted intermediaries operating at the intersection of social authority and quasi-institutional practice. These actors did not replace the formal property system but functioned as proximate sources of legitimacy where state processes were inaccessible, slow or poorly understood. Alongside household-level practices of social witnessing, many off-register transactions were shaped and authorised through local governance structures, such as street committees or neighbourhood leaders, sometimes referred to as groups linked to or aligned with SANCO. These actors performed functions that, in formal transactions, would ordinarily be carried out by conveyancers, municipal officials or courts. Their involvement ranged from facilitating contact between buyers and sellers, witnessing payments and recording agreements, to mediating disputes and, in some cases, compelling the disposal of properties through community-driven pressure. Across the cases, these structures operated as hybrid forms of governance, drawing authority from local recognition, moral legitimacy and the capacity to enforce decisions within the community. For purchasers, this involvement often provided reassurance and stability where the formal property system was experienced as slow, inaccessible or difficult to interpret.

Transactions validated through local structures were commonly regarded as legitimate, even in the absence of registered transfer. In several cases, community-based structures played a decisive role in shaping the conditions under which sales occurred, extending beyond witnessing transactions to determining whether households were entitled to remain in a property or required to leave. These decisions were often grounded in principled or moral reasoning, assessments of conduct and notions of belonging rather than in formal ownership records. In **HH21 (Mandela Park)**, the street committee acted as the central authority throughout the transaction. The purchaser reported that the seller's family were compelled to dispose of the property after the committee labelled them as 'non-desirables', following a murder committed by a relative of the family in the community. The committee insisted that the house be sold to cover funeral costs for the deceased.

In other cases, hybrid governance structures functioned less coercively and more as procedural intermediaries. Committees or locally recognised actors facilitated transactions by witnessing payments, retaining copies of documents and issuing confirmation letters treated by purchasers as proof of ownership. These practices did not replace the formal system but operated alongside it, offering an accessible and locally intelligible form of authorisation in the absence of registered transfer. In **HH25 (Makhaza)**, a SANCO-linked committee facilitated the transaction, witnessed payment, recorded the sale and issued a confirmation letter alongside the handover of the seller's original title deed. The purchaser explained that in the area, the SANCO process "comes first", with the formal system approached later if resources and circumstances permit. In such cases, committee endorsement and documentation were treated as sufficient proof of ownership for occupation and investment, even without registered transfer. Formal

conveyancing was understood as a secondary and often deferred step rather than the constitutive moment of ownership.

**HH15 (Town Two)** introduces a more unsettling dimension to this pattern by illustrating the consequences of both the absence of local principles at the point of sale and the later emergence of hybrid governance tailored to defend. Following the death of the original beneficiary, the decision to dispose of a plot was taken within the family while the deceased's children were still very young and unaware of the implications. The sale, reportedly to cover funeral expenses, also occurred without the involvement of street committees, SANCO-linked structures or other locally recognised authorities. Over time, the plot changed hands through multiple informal transactions, became subdivided and densely occupied, eroding shared understanding of legitimate ownership. Only in adulthood did the siblings become aware of what they understood as an informal, socially sanctioned succession arrangement that had excluded them. They then asserted their claim. After tracing a former registered owner who had relinquished his interest in the property to them, the heirs succeeded in restoring formal title via state processes. Although this legal restoration entitled them to evict the current occupants, they never reoccupied the house, and the street committee refused them entry. When they sought to assert their rights, they encountered intense community resistance, with residents opposing eviction on the grounds that recognising the heirs' claim would destabilise other off-register acquired holdings in the area. Despite holding lawful title, the heirs were effectively prevented from re-entering or occupying their home. Both neighbourhood pressure and local unofficial authority prevailed, resulting in their practical dispossession. Local resistance was framed as a defence of local stability in a neighbourhood shaped by serial informal transactions and widespread tenure insecurity. It did not directly oppose the law but endorsed local practice.

These findings show that hybrid governance forms a crucial part of the property system in many low-income areas. Local structures assume authority and mediate between households and the state, drawing on both law and custom according to local practice. They shape who may buy or sell, whose claims are recognised and how disputes are resolved. Their authority is relational and contingent, providing stability and protection in some cases, while in others, overriding formal ownership and rendering lawful claims practically unenforceable. The variability is due to the adaptation to local contexts. In this sense, hybrid governance does not merely fill institutional gaps but can, under conditions of dense informality and collective risk, reconfigure the meaning of ownership itself, privileging locally produced tenure arrangements over constitutional entitlement.

### **4.3 The opacity and uneven performance of the formal property system**

Purchasers' encounters with the formal property system were frequently shaped by bureaucratic red-tape and institutional uncertainty. While registered ownership remained the formal benchmark of tenure security, engagement with municipal or legal institutions rarely occurred through an orderly process of transfer. Interaction with the formal system was typically triggered later by disputes, deaths or administrative needs rather than by an initial intention to formalise ownership. Purchasers often understood a transaction to be complete once payment

had been made and occupation secured. Formal registration was seen as desirable but not always urgent, particularly where occupation was uncontested. Engagement with the formal system was deferred until an external event forced the issue. When this occurred, transactions previously treated as settled were reopened, exposing a gap between everyday understandings of buying and the procedural requirements of registration. **HH20 (Khayamnandi)** illustrates how these encounters unfolded unevenly across institutional sites. The purchaser engaged the formal system only after the seller's death and a challenge by the seller's sons. The dispute was heard in the Small Claims Court, where the magistrate telephoned a witness during the proceedings of an open court to confirm the original agreement, leading to the dismissal of the heirs' claim. This judicial intervention stabilised the occupation but operated independently of the property registration process. This case demonstrates the separation, at times, of registered ownership and administrative procedures. Following the court outcome, the matter shifted into an administrative process. An internal municipal investigation established that, despite being built in the late 1990s, the house had never been formally transferred into the deceased seller's name. This finding reframed the issue from a contested sale to an unresolved allocation. Because the property had not entered the legal domain of a deceased estate, the municipality retained discretion to amend its records. Confirmation of occupation emerged through administrative incorporation, materialising in amended municipal records and the issuing of a municipal services account in the purchaser's name. This administrative recognition constituted an initial step toward legal transfer to the occupier, to be followed through with a separate registration process managed by the municipality as the original developer.

In other instances, however, engagement with the formal system did not produce stabilisation, even where purchasers attempted to follow recognised legal or quasi-legal routes. For example, in **HH2 (Delft)**, an informal purchase recorded by police affidavit in 2008 did not prevent later eviction once court papers revealed a competing registered owner. After her husband died in 2009, the purchaser pursued the matter through an attorney based in Bellville, whose offices were located close to the court. She spent approximately R10 000 on consultations and related legal processes, but never personally entered a courtroom or participated directly in the proceedings. The matter was handled entirely by her legal representative before she was advised to vacate the property. Similarly, in **HH5 (Harare)**, a 2017 cash purchase facilitated by an estate agent and a conveyancer collapsed when a SANCO-linked street committee asserted that the seller, as the deceased owner's daughter-in-law, had no authority to sell because there were other surviving heirs. The buyer lost both her money and access to the property after the seller relocated, the conveyancer ceased engagement, and the street committee enforced eviction.

In both these cases, formal processes were present but ineffective in producing tenure resolution, and responsibility for resolving different aspects of the transaction was dispersed across professional, legal, administrative and informal governance institutions rather than consolidated within a single authority. Rather than operating as a linear pathway toward ownership, engagement with the formal system unfolded as a series of disconnected and weakly coordinated interventions. Judicial processes resolved disputes but remained separate from registration, professional intermediaries failed to secure transfer or accountability and informal governance structures often shaped outcomes. These findings indicate that the formal property

system operated less as a coherent mechanism guiding transactions toward registered ownership than as a set of segmented and unevenly performing processes. Outcomes were shaped not only by documentation or compliance but by timing, institutional sequencing and discretionary interpretation. While some purchasers were able to secure partial recognition through administrative intervention, others experienced prolonged uncertainty or outright dispossession. The opacity and uneven performance of the formal property system thus structured both the risks and the limited opportunities through which off-register transactions were navigated, contested and only partially resolved.

#### 4.4 Off-register transactions as evolving and contingent tenure trajectories

This section traces off-register transactions over time as evolving and contingent trajectories rather than fixed or completed events. It focuses on how tenure arrangements shift in response to changing household circumstances, emerging disputes and administrative or legal interventions. Off-register transactions are understood not as singular moments of exchange, but as uneven processes unfolding over time. Most purchasers initially treated transactions as settled once payment had been made and occupation secured. At this stage, tenure appeared stable, where everyday life continued uninterrupted and no competing claims were raised. Formal registration was commonly deferred, not because it was rejected, but because there was no immediate need to pursue it. In some instances, deferral enabled later consolidation under changed household or administrative circumstances.

**HH1 (Delft)** illustrates such a trajectory. After purchasing a state-subsidised house through an off-register transaction in 2003, the household occupied the property without registered title. Formal transfer was only initiated in 2008, when the household applied for a second mortgage to acquire another property. This engagement enabled registration and eventual resale through the formal market many years after the initial off-register purchase. In other cases, deferred formalisation produced more complex and adaptive trajectories. **HH23 (Lower Crossroads)** illustrates how an initial informal cash purchase in 2006, followed by occupation, evolved into a hybrid tenure arrangement. This included a successful individual housing subsidy application through the provincial Department of Human Settlements, strategically using a family member as a proxy beneficiary, extended periods of rental (2006- 2011), subsequent occupation by the purchasing family (2011-2022), and eventual formal sale in 2022. Over this period, the household shifted between occupation, rental and administrative engagement, adjusting its strategy in response to household needs and subsidy constraints. Rather than progressing sequentially from informality to formality, tenure shifted back and forth across different arrangements over time, reflecting the kind of non-linear, multi-directional tenure trajectories that challenge evolutionary interpretations of the land rights continuum (Whittal, 2014).

By contrast, some long-term trajectories show how extended occupation without registration can amplify vulnerability rather than security. Three examples from Makhaza provide illustration. **HH24** involved a household that occupied a plot from the early 1990s. Many years later, unresolved allocation and registration histories resurfaced when registered beneficiaries arrived with title deeds issued through formal processes, requesting the current occupants

vacate the premises. What had functioned as stable tenure was abruptly transformed into a contested claim, triggering collective mobilisation, legal action and reliance on informal governance structures. Other cases reflect similar temporal dynamics at different stages. **HH8** involved an informal purchase of a state-subsidised house in 2009 that was initially treated as secure, with payment made and occupation proceeding without contest. Tenure security was threatened later when it emerged that the property had been registered jointly in the names of the seller and his estranged wife residing in the Eastern Cape. The wife indicated that she had been unaware that a subsidy house had been issued and that her husband, now deceased, had sold the property without informing her. The purchaser traced and contacted her to secure cooperation for transfer. Upon learning of the property's existence, the wife asserted her rights and declined to cooperate with the transfer. In response, the purchaser withheld property details, fearing eviction. This impasse, grounded in marital property rights and mistrust, left the purchaser in prolonged legal limbo despite continued occupation. **HH25** reflects a more prospective tenure trajectory. An off-register purchase in 2023 was validated through SANCO-linked street committee processes, which functioned as the primary source of legitimacy. Formal conveyancing was not rejected but explicitly deferred, framed as something to be pursued once occupation was stabilised and funds secured. Here, tenure was understood as incremental and future-oriented, shaped by expectations of eventual formalisation rather than immediate compliance.

These cases show how off-register transactions do not end at the point of purchase but continue to evolve as households encounter death, dispute, administrative delay and shifting institutional responses. Across the cases, tenure arrangements were repeatedly reworked through partial interventions by courts, municipalities and intermediaries, producing outcomes that were provisional rather than final. These cases illustrate how ownership is stabilised, contested or altered over time, rather than resolved through a single moment of registration.

## **5 DISCUSSION: CONCEPTUAL AND GOVERNANCE IMPLICATIONS**

Building on the empirical patterns traced across section 4, the findings sharpen our conceptual framing of the persistence of off-register transactions in terms of an epistemic misalignment between how ownership is formally defined and how it is practically understood, accessed, and sequenced by first-time homeowners in state-subsidised housing contexts. There is no direct resistance to formal law as such. Across the cases, purchasers recognised registered ownership as desirable, yet encountered a property system experienced as opaque, poorly timed and difficult to navigate in relation to everyday life events such as death, household change or financial pressure. Rather than engaging registration as a single, linear endpoint, ownership emerged as a process unfolding over time. Institutional engagement was typically reactive, triggered by disputes, administrative crises or later strategic needs rather than by an initial intention to formalise. This temporal mismatch shaped how transactions evolved, meaning that opportunities for straightforward transfer were often missed, while later interventions by courts, municipalities or professional intermediaries addressed discrete problems without providing an

integrated pathway to ownership. Tenure outcomes were shaped less by compliance or documentation alone than by the sequencing of institutional encounters and the uneven performance of formal property systems. Our analysis shows that the formal system is typically encountered episodically (and not necessarily at the start of the process) rather than as part of a continuous pathway to ownership, rendering timing and sequencing critical to tenure outcomes.

From a land administration perspective, the findings highlight the limits of the modern concept of the cadastral system as a definitive endpoint rather than as part of a longer tenure trajectory. Where judicial, administrative and professional processes operated in isolation, households assembled partial and provisional forms of recognition across fragmented institutional sites. Informal and hybrid governance structures filled these gaps, sometimes stabilising tenure and at times overriding payment, inheritance or attempted compliance. The ensuing institutional fragmentation produces a landscape of layered and competing authority rather than a coherent system guiding transactions toward formal ownership. These insights suggest that efforts to address tenure insecurity in state-subsidised housing should move beyond enforcement-oriented or record-correction approaches alone. Improving tenure security may require greater attention to the intelligibility, accessibility and timing of institutional engagement, as well as mechanisms that recognise incremental and processual pathways to ownership. Off-register transactions are likely to remain a durable feature of the housing landscape if the systemic challenges are not addressed.

## 6 CONCLUSION

This paper has shown that off-register property transactions in South Africa's state-subsidised housing sector are best understood not as aberrations, but as structured responses to a formal property system that is difficult to negotiate and accessed in the light of processual practices that follow household trajectories and familial succession. The findings demonstrate that ownership is experienced as a process unfolding over time, shaped by household change, dispute, and delayed institutional engagement rather than resolved at the point of purchase. Off-register transactions persist not because households reject formal ownership, but because of an enduring misalignment between state-defined property forms and lived tenure practices. Recognising this temporal and epistemic gap has important implications for land administration and cadastral reform, pointing to the need for approaches that foreground intelligibility, timing and incremental pathways to ownership if tenure security in subsidised housing is to be meaningfully strengthened. The findings and analysis are part of an ongoing research project and will be refined over time with more scalable evidence.

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The semantic and epistemic divide in South Africa’s state subsidised housing market: Understanding off-register property sales (13782)

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