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**Land Registration Use:  
Sales in a State-Subsidised Housing Estate in  
South Africa**

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by

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Land Registration Use: Sales in a State-Subsidised Housing Estate in South Africa

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## **Abstract**

The objective of this investigation is to develop land registration usage theory based on an in-depth exploration of how and why property buyers decide to transact within or outside the land registration system. If buyers decide not to register transactions, significant implications arise; for buyers, who may be vulnerable to eviction by the previous owner or the state, and for the integrity of the registration system which does not reflect the actual ownership of parcels.

Despite these implications, the current understanding of land registration usage is limited, even though it is recognised that land registration may fail, particularly in development projects, because transactions are not registered. To address the limited understanding of land registration usage, a qualitative case study was conducted of a state-subsidised housing estate in a rural town in South Africa's Western Cape province. The case study was analysed using a theoretical framework which incorporated the Theory of Planned Behaviour.

The theory that emerged explained that buyers evaluate transaction-securing strategies in a transactional environment which included behavioural, power and regulatory structure components. The behavioural component included the transacting off-register and registration behaviours, which are partly complementary and mutually influential. These behaviours are evaluated by buyers in terms of their personal and social beliefs, and the factors which they believe control the performance of the transaction-securing strategies. Buyers may also select a particular transaction-securing strategy based on their perceptions of the level of tenure security and threats associated with loci of power. Furthermore, the relation of time to the transactional environment was incorporated by including a time component. Contextual characteristics, such as the housing history, population changes and migratory behaviour of residents, as well as the land records, also shaped the transactional environment.

The study contributes to the understanding of land registration usage by describing how and explaining why buyers decide to use transaction-securing strategies based on their experiences. This understanding provides new insights that may change the design and implementation of land registration systems, to ultimately better serve the people whom these systems are intended to benefit.

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## **Glossary of Terms**

**Affidavit:** A declaration signed under oath in the presence of a legally authorised person referred to as a commissioner of oaths. The more commonly encountered commissioners of oaths in South Africa are members of the police service and attorneys.

**Alienation:** “The action of transferring legal ownership of something.” (OED Online 2012)

**African National Congress (ANC):** The ruling political party in South Africa since 1994 and prior to that a significant anti-apartheid organisation.

**Backyard shack:** A shack or pre-fabricated wooden structure (Wendy house) used as additional accommodation for family or tenants on the property of the primary housing structure. Although the word specifies “backyard”, the structure may be anywhere on the property not just in the enclosure behind the house. Backyard shacks are found in state-subsidised housing estates, but also in informal settlements and adjacent to municipal apartment blocks (municipal flats). See shack.

**Cadastral system:** “A system comprising the processes, instruments and structure that support land tenure security and a multitude of other land administration objectives.” (Barry 1999)

**Councillor:** Councillors that serve on municipal councils are either elected by the residents who live in a ward (ward councillors) or elected by proportional representation. Councillors are responsible for matters such as policy and decision making, and passing by-laws. See municipality.

**Conveyancer:** An attorney (lawyer) who has passed conveyancing examinations set by the Law Society of South Africa. In South Africa, a deed of transfer may be registered only if it is prepared by a conveyancer, unless another act provides differently (Deeds Registries Act 47 of 1937, s.15).

**Conveyancing:** “The drawing of deeds and other instruments, for the transference of property from one person to another“ (OED Online 2012)

**Deed of Sale:** A legal contract between a seller and buyer detailing the purchase of land that is used to initiate registration and it creates a personal right. It is drawn up by a conveyancer. A Deed of Sale is also referred to as a Deed of Alienation or Agreement to Sell. (Alienation of

Land Act 68 of 1981, s.1, 2(1); van Huyssteen *et al.* 2010)

**Deed of Transfer:** See Title Deed.

**Deeds Office or Deed Registry:** The office of the Registrar of Deeds and the depository of land records. In South Africa there are ten Deeds Offices.

**Discount Benefit Scheme:** The Discount Benefit Scheme (section 3(5)b of the Housing Act 107 of 1997) assisted tenants of government-owned housing stock to obtain ownership. The Discount Benefit Scheme also assisted households who held state loans or acquired houses through deferred sales schemes (Department of Human Settlements 2009). See Phasing Out Programme and Extended Discount Benefit Scheme

**Erf:** See parcel.

**Extended Discount Benefit Scheme:** The Extended Discount Benefit Scheme replaced the Phasing Out Programme and Discount Benefit Scheme and had the same purpose (Department of Human Settlements 2009). See Phasing Out Programme

**FICA compliance:** Compliance in terms of the Financial Intelligence Centre Act 38 of 2001. The Act was passed to prevent unlawful financial activities and money laundering.

**Identity Document (ID):** A legal document proving identity. In South Africa, identity documents are issued to citizen older than sixteen years.

**IDT:** See Independent Development Trust (IDT)

**Independent Development Trust (IDT):** a quasi non-governmental agency concerned with poverty relief.

**Indigent policy:** The Indigent Policy assists poor people in accessing basic services such as water, electricity, sanitation and refuse removal. Access to basic services is a constitutional responsibility of local government (Constitution of the Republic of South Africa 108 of 1996, s.152) and each municipality (or local authority) has its own Indigent Policy. The definition of “indigent” varies, but the national guideline is that anyone who has an income less than twice the old age grant (R1,010 from April 2009 - Department of Social Development 2008) qualifies as an indigent. (Department of Provincial and Local Government 2010a, 2010b).



**Informal settlement:** A term commonly used in South Africa to describe “an unplanned and unregulated urban settlement erected on land not officially proclaimed as a residential area” (OED Online 2012)

**Land administration:** “An operations management function to administer and implement land policy strategies.” (Barry 1999)

**Land management:** “The strategic planning, policy development and policy implementation process related to land.” (Barry 1999)

**Land policy:** “A complex of socio-economic and legal prescriptions that dictate how the land and benefits from the land are to be allocated, managed and administered.” (Barry 1999)

**Land tenure:** “A system incorporating the way in which land is defined and held. It comprises a matrix of social, political, physical and legal relationships that support and negate the holding and use of land by individuals and groups of people.” (Barry 1999)

**Legal contract:** In this dissertation a legal contract is operationally defined as a written contract signed at a lawyer’s office. Although a Deed of Sale is also a legal contract, in this dissertation Deed of Sale is referred to separately since it is a particular legal contract that initiates registration and unlike many other contracts it has to be in writing.

**Loci of power:** In the theoretical framework presented in this dissertation the loci of power are individuals, groups and/or organisations that exert control over transaction-securing behaviours (refer to section 4.1). The definition of loci of power is extended in section 8.4 to include artefacts.

**Municipality:** In South Africa there are three types of municipalities: local, district and metropolitan. This dissertation implies local unless otherwise stated. Local municipalities are found in rural areas. The tiers of government from the bottom up are as follows: local municipality, district municipality, provincial government and national government. Municipalities are governed by elected councils. See councillors.

**Municipal account:** The municipal account lists the charges for rates, water, electricity (unless a pre-paid electricity meter is used), sewerage and refuse removal.

**NGO:** Non-governmental organisation

**Parcel:** An area of land with defined boundaries. Also referred to as a plot, lot, tract and in South Africa it is typically called an erf in urban areas or a farm in rural areas.

**Phasing Out Programme:** The Phasing Out Programme (section 14(9) of the Housing Act 107 of 1997) promoted the transfer of publicly-owned housing stock. The Phasing Out Programme was used to phase out pre-1994 housing subsidies. (Department of Human Settlements 2009) See Discount Benefit Scheme and Extended Discount Benefit Scheme.

**Power of attorney to transfer:** A power of attorney to transfer gives “authority to another person to execute deeds or carry out transactions” (Simpson 1976, xlv).

**Pre-paid electricity:** Pre-paid electricity is supplied by electricity dispensers installed in houses. A resident can buy a token from a vendor and use it to add electricity units to the dispenser.

**Project transfer:** The transfer of a title deed that occurs as part of the development of a state-subsidised housing project and confers ownership to the state-subsidy beneficiary. Also referred to as a first-generation transfer.

**Property:** Property is defined in this dissertation as the combination of a house and the land on which the house is built.

**R:** South African currency. One Rand is equal to  $\pm 0.12$  Canadian Dollars in December 2012.

**Rates:** Property tax charged by the municipality according to the value of a property. (Local Government: Municipal Property Rates Act 6 of 2004)

**Rates clearance certificate:** A certificate issued by a municipality to confirm that all the outstanding municipal arrears on a property being sold have been paid. The rates clearance certificate is also one of the documents required for registration. (Municipal Systems Act 32 of 2000, s.118)

**Reconstruction and Development Programme (RDP):** A macro socio-economic policy of the South African government replaced by the Growth, Employment and Redistribution (GEAR) policy.

**Regulatory structures:** In this dissertation the regulatory structures are rules, regulations and/or laws that govern the actions of the loci of power and control transaction-securing behaviours (refer to section 4.1).

**Sales contract:** See Deed of Sale

**Shack:** “A temporary dwelling, typically constructed from a wooden framework clad with metal sheets and waterproofed using plastic sheets.” (Barry 1999)

**Shebeen:** An “illicit establishment where liquor is sold or consumed” (OED Online 2012).

**Street committee:** An area based organisation that originated during the Apartheid era as an alternative form of local government to Apartheid government structures and community court for black residents in urban areas. Street committees still exist in urban areas of South Africa, though their functions may have changed.

**Title deed:** Under South African legislation the registered deed of transfer becomes the title deed which serves as proof of rights to property (Simpson 1976; Deeds Registry Act 47 of 1937). The title deed contains the owner’s information, the property description and conditions that affect the ownership.

**Transaction-securing process:** The process a buyer goes through to secure a transaction in land. The process includes actions and events that affect the transaction, and may include more than one transaction-securing strategy.

**Transaction-securing sequence:** A sequence of different but related transaction-securing strategies.

**Transaction-securing strategy:** The strategy a buyer uses to secure a transaction.

**Tripod transfer:** A tripod transfer is a process whereby two transfers (person A to person B and person B to person C) involving the same property are registered consecutively. Generally the lawyer presents all the documents for registration, pertaining to the two transfers, in one package.

## Chapter One: **Introduction**

### **1.1 Introduction**

Tenure security is regarded as fundamental to improving the living conditions of the urban poor in the developing world (Payne 2004, Cousins *et al.* 2005, GLTN 2008). Often governments and development agencies have used land titling to support tenure security (Deininger and Feder 2009). However, it has been observed by researchers that titling programmes in developing countries seldom achieve the objectives set out by the programme designers (Platteau 1996, Firmin-Sellers and Sellers 1999, Barry and Fourie 2002, Benjaminsen *et al.* 2008, Payne *et al.* 2008, Sjaastad and Cousins 2008, Toulmin 2008, Deininger and Feder 2009, Zevenbergen 2012).

The objectives of land titling programmes typically include securing property rights and supporting the transferability of these property rights (Deininger and Jin 2006). To achieve these objectives, a device, such as a land registration system, is used to record land rights and ownership. The implication is that if the land registration system is not used to record transfers of land rights and ownership, the land titling programme fails to secure property rights and support transferability. This is the central concern of this dissertation: why do individuals who purchase property, which was registered as part of a land titling programme, decide to use or not use the land registration system to secure transfers.

If the registration system is not used to secure land transactions, off-register transactions occur. These are also referred to as informal, extra-legal or unofficial transactions. In this dissertation the term off-register is preferred since it is a neutral term and directly linked with land registration system use. Ownership can be transferred between private parties without public or official notice in legal systems that permit private conveyancing (Simpson 1976). However, in South Africa (Deeds Registry Act 47 of 1937; Alienation of Land Act 68 of 1981) and many other countries, the courts recognise the transfer of land and rights only through registered land transactions.

Off-register transactions have important consequences. Firstly, when a transaction is registered, the buyer is legally recognised as the owner; thus ensuring security of tenure. If the sale is off-

register, the owner may become vulnerable to eviction by the state, or by the previous owner. Secondly, if data in the land registration system is outdated or inaccurate, it threatens the integrity of the rest of the data. To quote Simpson (1976, p. 17), “plainly an inaccurate register would be worse than useless”. Thirdly, without a registered title deed and therefore legal proof of ownership, an owner may not be able to access formal housing-related credit. For example, in South Africa a mortgage bond is registered against a title deed. Fourthly, inaccuracy in the land records may also result in a frozen formal land market, where it becomes impossible to transfer land legally, because the continuity of title has been disrupted (Barry 2005). Fifthly, the management and administration of cities are mostly based on data gleaned from land records; for example, the provision of services, land taxation and indigent policies (which supports access to basic services - refer to section 6.6) are linked to ownership. From the perspective of city management it also becomes difficult to collect outstanding arrears when land records are not current. Essentially all these factors show that off-register sales affect the management and administration of urban areas, the security of owners, and may weaken already marginalised residents even further.

Off-register land transactions have been observed in South Africa and other countries (Dickerman *et al.* 1989, Deininger 2003, Gordon 2008, Karam 2008, Marx and Rubin 2008a, 2008b, Payne *et al.* 2008, Smit 2008). Yet very few studies have explored off-register transactions from the perspective of land registration system use (Barry 1999, 2005, Barry *et al.* 2012).

To address the gap in knowledge, this dissertation investigates both registered and off-register transactions in a state-subsidised housing estate in South Africa, with a particular focus on sales. The dissertation uses this investigation to develop land registration usage theories based on the experiences of the buyers.

Following this introductory section, international land titling perspectives and research in the cadastral field are briefly described. This is followed by a short introduction of the South African housing programmes and registration. Then an overview of existing research leads to the

identification of the research problem. The chapter also states the research aim, objectives, questions, methodology, scope and limitations, and contribution. The chapter concludes with a dissertation outline.

## **1.2 Background**

### ***1.2.1 International***

Land titling has been used by governments and development agencies in rural development projects for decades and, in the 1990s, titling programmes were introduced in peri-urban and urban areas (Payne *et al.* 2007, Easterly 2008). However, titling in urban areas gained particular prominence following the publication of Hernando de Soto's *The Mystery of Capital* (2000). De Soto's thesis in simple terms, states that the poor hold assets, but that these assets are defective (dead capital), thus preventing them from accessing the potential of the capital they hold. De Soto argues that if the assets of the poor are formalised, they would be able to access credit; investment will occur which, in turn, leads to social and economic development. Central to his argument is formalising the hidden (i.e. extra-legal or informal) land assets of the urban poor and providing tenure security by means of titling programmes.

De Soto's work has been criticised on various fronts, ranging from methodological errors to over-simplification and lack of empirical evidence (Payne 2001, Sjaastad and Cousins 2008, Payne *et al.* 2009, van Gelder 2009, Obeng-Odoom 2012). Empirical evidence also demonstrates that land titling is inappropriate in some contexts and may even be detrimental to existing tenure security (Deininger 2003, Cousins *et al.* 2005, Bromley 2009, Payne *et al.* 2009).

Furthermore, development organisations, such as the World Bank, have changed their policy focus from individual titling to a more nuanced approach in response to new perspectives (Payne *et al.* 2009). Also, UN-HABITAT now promotes a continuum of land rights as opposed to individual title alone (UN-HABITAT 2011). However, the agency continues to promote registration as stated in *The State of African Cities* report, "Land registration . . . is a necessary condition for the proper operation of formal land markets" (UN-HABITAT 2010, p. 219).

Technological development has matched the surge in research surrounding tenure security and development with the introduction of new land information system tools and models. The stated objective of the alternative land information system tools and models is to remedy the failure of registration systems and land titling. Among the tools and models proposed as alternatives to a conventional land information system, such as the registration system are: the Social Tenure Domain Model (Augustinus *et al.* 2006), the Talking Titler Model (Barry *et al.* 2009), Open Title (Edmead 2010) and Sola (Pullar *et al.* 2012).

Land titling and land registration are still used, despite shifts at policy level and technological developments. Examples include the large-scale housing programmes in South Africa through which beneficiaries are recorded as owners in the land registration system.

### ***1.2.2 South Africa***

Upon the demise of apartheid in South Africa, there was an enormous urban housing problem, which remains despite intervention by the government and other local and foreign organisations. In 1994 an estimated 1.06 million households (7.7 million people) lived in informal settlements (Department of Housing 1994). Since then the government has facilitated access to 3 million houses, but there remains an outstanding demand for 2.1 million units (Sexwale 2011, Financial and Fiscal Commission 2012).

As a means of addressing the housing problem, the government makes housing subsidies available to those earning less than R3,500. Most of these subsidies are linked to individual ownership. A political factor that may have guided this choice is that many in South Africa view individual land rights as a matter of political redress for injustices suffered under apartheid, one of which was the denial of ownership rights (Royston and Ambert 2002).

Despite the focus on individual ownership supported by the registration system, the existence of off-register transactions in state-subsidised properties in South Africa is documented in both scholarship (Barry 1999, Payne 2002, Marx 2007b, Gordon 2008, Marx and Rubin 2008b, Payne

*et al.* 2008, Smit 2008) and the popular press (e.g. Gophe 2005, Hweshe 2008, Boyi 2010). However, there is no reliable information about the extent of the problem.

In addition to the negative outcomes listed in section 1.1, off-register transactions also impact the government housing subsidy programme. The subsidy programme is aimed at people who never owned a house and the government uses the registration system to confirm this information. Since off-register transactions are not recorded in the registration system the buyers may still qualify for subsidies. This affects government planning because the buyers remain on housing waiting lists. It also means that purchasers may qualify for a state-subsidised house, although they already have a house. This increases government expenditure and means another person without a house will wait longer to benefit from the programme.

Although off-register transactions have been identified in state-subsidised housing estates and have significant implications, there is limited research about the interaction of newly registered owners with the registration system. The next section introduces the existing research in South Africa.

### ***1.2.3 Existing research***

Barry *et al.* (2012) recently presented a three-stage land registration usage theory, being a continuation of his research in Cape Town (1999, 2005). The land registration usage theory was developed from systems theory, social change theory and the Theory of Planned Behaviour. The theory is based on case studies in South Africa and has been tested in a case study of a customary peri-urban area in Accra, Ghana. The case study presented in this dissertation and the case studies used to develop the three-stage theory are part of the same broader research project. The three-stage theory is examined in Chapters 3 and 4.

Other studies in South Africa considering land registration use are conducted from a land market perspective. These land market studies have examined land registration in state-subsidised housing estates in South Africa or advanced conceptual hypotheses. However, land registration use was examined in relation to the land market and not addressed as a central issue (Shisaka



2003a, 2003b, Mooya and Cloete 2007, Gordon 2008, Karam 2008, Marx and Rubin 2008a, 2008b, Smit 2008, Lemanski 2010).

A 2009 Western Cape provincial government-sponsored study did examine land registration use in state-subsidised housing estates, but the results were limited. The study included a quantitative survey and established that 9% of the houses were accessed through sales. However, the researchers could not definitively establish if these houses were bought using off-register transactions. Also, findings explaining the nature of sales in state-subsidised housing were based on interviews with estate agents and municipal officials and not the buyers (Vorster and Tolken 2009).

The literature is critiqued in greater depth in Chapter 3. It will suffice to note that little theory about land registration use exists and most studies that address land registration are concerned with land markets or base their findings on the experiences of experts or officials. Therefore, a gap in the knowledge about land registration system use exists. This dissertation further develops land registration system use theory within the context of case study, and grounds the theory in the experiences of state-subsidised housing residents.

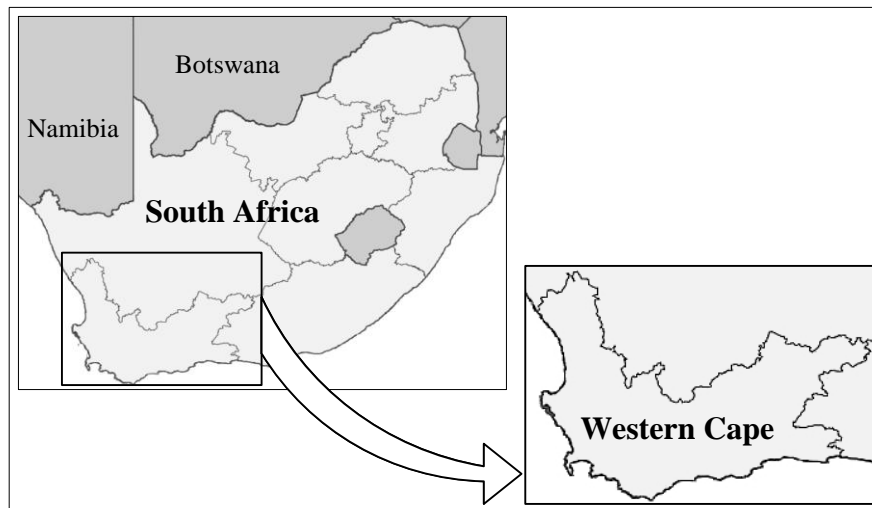
### **1.3 Research problem**

In South Africa, land registration remains the preferred method of providing tenure security to marginalised groups. However, the tenure security supported by the land registration system is unsustainable if sales are not registered. Without exploring why the land registration system is used or not used to secure transactions it is difficult to change the land registration system or consider alternatives.

### **1.4 Research objective**

The research objective is to develop theory explaining land registration system usage in an urban area where the South African government supported home ownership using land registration. Specifically the study will explore how and why property buyers in the state-subsidised housing estate decide to transact within or outside official systems, in a rural town in the Western Cape

province of South Africa (see Figure 1.1). Significantly, and as a departure from previous development in the area of inquiry, the theory is developed mainly from the perspective of property buyers. Also, the transaction-securing processes and strategies are understood as embedded in the local historical, social and institutional context. This context is also positioned within the larger provincial and national institutional environment and legal framework.



**Figure 1.1: South Africa: Western Cape**

### **1.5 Research questions**

The research questions that guide the investigation are:

- Why do buyers of state-subsidised houses use, or not use, the registration system to secure transactions?
- How do buyers of state-subsidised houses secure transactions?

### **1.6 Research methodology**

The research methodology was developed using case study methods to investigate the research problem.

The investigation started with a literature review to examine the problem background, develop methodology and structure the theoretical framework. This was followed by data collection in the case study area over a total of eight months spanning three years. These visits were

interspersed with analysis periods. The research design and methodology are described in greater detail in Chapter 5.

Initially the case study criteria were stated as state-subsidised housing projects in secondary towns in the Western Cape. Other selection criteria are discussed in section 5.2.3. The broader research project identified and conducted fieldwork in six research sites. However, this dissertation only discusses one of the sites. This is because this research site was unusual in terms of access and the depth of data collected (refer to section 5.2.1), and fits the scope of a doctoral study on its own.

The case study is delineated by the geographical boundaries of the state-subsidised housing development project. The project is a localised system, where the residents were part of the same housing development process and the initial state of land tenure and land records were generally homogenous at the completion of the project. For example, at the end of a project the beneficiaries received land titles with the same restrictions.

The decision to use the housing development project as a case was further supported by the findings in the field that the residents in the state-subsidised housing estate share the same local institutions, the same sources of information, and that powerful groups and individuals tend to operate within the shared geographical area.

A variety of research strategies are used in case study research. The study used semi-structured and open-ended interviews with buyers, residents (original state-subsidy beneficiaries and tenants), local leaders, municipal officials, councillors and lawyers. The interviews provided data about land transaction processes and strategies to secure transactions, the state-subsidised housing estate and neighbourhood history, the housing project development process, and the relationship between the residents and the municipality. Personal housing histories were also collected from buyers.

Municipal documents and council minutes were obtained from the municipality to assist in establishing housing project histories, past practices and the municipal experience of sales in state-subsidised housing estates. This information assisted in understanding the institutional environment. Articles from local, provincial and national newspapers provided confirmation of municipal practices as well as historical data. The historical data proved useful in constructing a chronology of housing developments and other official actions, and in dating events narrated in life histories.

Data analysis is mainly qualitative and included case study analysis methods. Coding and constant comparison (refer to section 5.4.2) were used to analyse the transaction processes. The methodology is discussed in greater depth in Chapter 5.

### **1.7 Assumptions, scope and limitations**

This study assumes that land information systems - in particular the land registration system - are suitable to uphold tenure security in appropriate circumstances. This assumption is in accordance with the background of the researcher as a land surveyor and her disciplinary bias. Although the research does not regard the land registration system as the only way to secure tenure, the land registration system is the focus of this investigation.

The research is limited to one case study. Multiple case studies would increase the robustness of the study and the broader research project does include six cases. However, single case studies are suitable when a researcher obtains unusual access to a research site. The case study used in this dissertation provided an unusual depth and variety of data as well as longitudinal data. This type of case is especially relevant in the development of new theory (Benbasat *et al.* 1987, Yin 2009, Flyvbjerg 2011). Although using a single case study has limitations, it is the appropriate choice for the research.

The other five case studies did influence this study, thereby introducing bias, since the researcher had knowledge of the findings. However, an advantage of this knowledge is that even though the

findings and analyses in this dissertation are confined to the one case study, the other cases provided a broader understanding and indicated possible avenues of investigation.

The aim of the research is to develop explanatory theory and not design or prediction oriented theory. Explanatory theory provides a possible explanation for a phenomenon grounded in a substantive area (Barry and Roux 2012b). Therefore, the research does not provide recommendations for future action.

The research also does not examine land registration usage in other types of housing, such as pre-1994 housing stock or site-and-service schemes, thus scoping the study to a project that supplied housing at the same time as registered ownership.

Since this research adopted a qualitative approach and relies on interview data, it is assumed that participants will answer interview questions truthfully based on their personal experiences. To alleviate the introduction of false information, interview data was confirmed using triangulation and documentary evidence. Despite the use of these techniques, some information, especially data about off-register transactions, are not known by others and is difficult to verify. This is further discussed in section 5.5 Validity and Reliability.

In addition the research is biased towards the experiences of buyers. Ideally, sellers would be included in the research to triangulate data and give a different perspective. However, sellers were very difficult to identify. Few sellers continued to reside in the state-subsidised housing estate after a sale and many have moved to different towns or provinces. Also, the fieldwork showed that the onus was on the buyers to decide whether or not to register, and very few off-register or registered transactions were initiated by the seller.

Participants spoke English, Afrikaans, and isiXhosa. The researcher is fluent in the first two of these languages and was assisted by a facilitator in interpreting for isiXhosa speaking participants. Given the potential for misinterpretation, attempts were made to alleviate any misunderstandings, as described in greater detail in section 5.5.

Field data gathering was constrained by the research project's ethical guidelines. Since the ethical guidelines specified participant anonymity, certain matters could not be investigated in a direct way since it would have identified the participants. Security concerns also prevented direct inquiries into the activities of criminals and gangs in relation to land tenure in state-subsidised housing estates.

The researcher's position may introduce bias. The researcher has a background as a land surveyor, has tertiary education, occupies a strong socio-economic position and is also a member of the racial group who were the main beneficiaries of apartheid. To address concerns about bias, self-reflexivity was practiced in the course of the research to continually address the subjectivities of researcher in relation to the analysis of data as well as the choices made about participants and types of data. The perspective of the participants in response to the position of the researcher was also reflected upon during the interview process.

Finally, the research investigates individual behaviour at a micro-level; therefore, policy and other macro-level concerns are not directly addressed.

## **1.8 Contribution**

This research contributes to knowledge by developing explanatory theory about land registration usage in state-subsidised housing estates. It builds on previous work on land registration usage, and explores new areas given that no-one has examined the issue from the perspective of residents in state-subsidised housing estates.

A study of land registration usage in a state-subsidised housing estate is important for several reasons. First, it will complement existing literature by adding research grounded in the experiences of property buyers in state-subsidised housing estates to existing research in the cadastral discipline. Second, insight gained from this study may assist in the design and implementation of land registration systems to better serve the people whom titling projects are intended to benefit. The investigation may also have implications for the use of alternative land information system tools and models, since the user interaction with these systems is likely to be

similar to interaction with the registration system, because it is also a land information system. Third, it will provide the state with a better understanding of property transactions in state-subsidised housing estates. Generally, the study will contribute to knowledge about land tenure in developing world cities, which in turn, feeds into policy and statutory development.

## **1.9 Organisation of dissertation**

Chapter 1 introduces the dissertation. Chapter 2 serves as a background to the case study by briefly introducing the South African land registration system and explaining the conventional transfer procedures and transfer costs. The various housing-related programmes and policies noted in the case study, including the South Africa social housing programme, the restrictive sales clause and the indigent policy are also described.

In Chapter 3 the research specific to land transactions is explored to embed the research problem within the literature and identify the literature gap. The argument is that there is a limited amount of theory that addresses land registration use and other literature, in addition to being market focussed, only advances hypotheses that are speculative or based on limited empirical evidence. This research thus aims to fill the literature gap by developing land registration usage theory based on the experiences of buyers in state-subsidised housing estates.

Chapter 4 develops the theoretical framework. The theoretical framework consist of three components; behaviour, loci of power and regulatory structures. The Theory of Planned Behaviour is described in depth since it is used to analyse the behaviour component. Findings from land tenure research supported the inclusion of the loci of power and regulatory structures in the theoretical framework.

The methodology is discussed in Chapter 5. The chapter argues that a qualitative case study strategy is appropriate to address the research objectives and justifies the decision to use a single case study. This is followed by descriptions of the data sources and collection procedures as well as a detailed explanation of the analysis procedures. The validity and reliability strategies are

also discussed and the chapter concludes with exploring the ethical issues that affect the research.

Chapter 6, 7 and 8 present the Project 2001 case study. Chapter 6 narrates the history of the case study area, highlighting events related to land tenure and housing. To answer the research question - How do buyers of state-subsidised houses secure transactions? - the chapter describes the land transactions in the case study area. Chapter 7 analyses the transaction-securing strategies by first identifying the transaction-securing behaviours as well as the loci of power and regulatory structures in the case study area. Second, the beliefs and factors that affect the decision of buyers are categorised in terms of the constructs of the Theory of Planned Behaviour: attitude towards behaviour, perceived subjective norm, perceived and actual behavioural control. The theoretical framework is then expanded by including the Buyer - Security/Threat - Loci of Power cycle which is based on the analysis of transaction-securing sequences. This is followed by an exploration of the relations amongst time, the transactional environment and the transaction-securing behaviours. Chapter 8 synthesises the findings in Chapters 6 and 7 and presents the theory developed from the analysis.

Chapter 9 provides an overview of the empirical findings and discusses the study's contributions, along with recommendations for future areas of research.



## Chapter Two: **Background and Terminology**

### **2.1 Introduction**

This chapter provides background information to the case study in Chapter 6 and the literature review in Chapter 3. It describes matters which are essential to understanding the findings and results in the case study. The chapter first discusses the South African registration system and transfer procedures. It continues by describing the South Africa social housing programme's project-linked subsidy and concludes with explaining the eight-year restriction on sales in state-subsidised housing (Housing Act 107 of 1997, ss. 10A and B).

### **2.2 The South African registration system**

The land registration system in South Africa is a uniform national system based on the Land Survey Act 8 of 1997<sup>1</sup> and the Deeds Registry Act 47 of 1937. The Land Survey Act 8 of 1997 ensures that all registered land is demarcated and represented on a diagram or general plan and the Deeds Registry Act 47 of 1937 sets out the procedures for the management and administration of the land registration system (Radloff 1996). Each title deed in the registration system is linked to a diagram or general plan.

There are two main actors associated with the land registration system (Radloff 1996). The registrar examines title deeds and other documents to ensure they are legal and capable of registration (Deeds Registry Act 47 of 1937, s. 3). The second actor is the conveyancer, an attorney who has passed the conveyancing exam. Only a conveyancer is permitted to prepare a deed of transfer (Deeds Registry Act 47 of 1937, s. 15). In the presentation of the case study in this dissertation, conveyancers are referred to as lawyers, which although strictly incorrect, is in line with the terminology used by state-subsidised housing residents.

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<sup>1</sup> Previously the Land Survey Act 9 of 1927.

In the South African land registration system the state does not guarantee<sup>2</sup> the correctness of the information in the land register and the deed (Simpson 1979; Deeds Registry Act 1937, s. 99). However, the title deeds are examined<sup>3</sup> by the Deeds Registry officials before registration. Also, the Deeds Registry Act 47 of 1937 section 16 stipulates that “the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the registrar”. This is what Simpson (1979) terms a negative warrantee, in the sense that legal ownership cannot be acquired by any other means. Therefore, although the state does not provide an explicit guarantee, the information in the registration system is regarded as correct. Also, although the deed is regarded a primary proof of ownership, it is not recognised if it is not registered (Simpson 1979).

### ***2.2.1 The process of registering a sales transfer***

The Alienation of Land Act 68 of 1981 is the primary piece of legislation that deals with land sales and operates in conjunction with the land registration system. The conventional process for registering property is illustrated in figure 2.1. In this overview it is assumed that the seller does not have a mortgage bond registered against the title deed.

The transfer process starts with a sales agreement (which may be a Deed of Sale, Deed of Alienation or Offer to Purchase) that is drawn up between the seller and the buyer. The Alienation of Land Act 68 of 1981 section 2(1) states that “No alienation of land . . . shall . . . be of any force or effect unless contained in a deed of alienation signed by the parties thereto”.

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<sup>2</sup> In the Torrens type land registration system, the state usually guarantees the correctness of the land register. There are countries other than South Africa where the state does not guarantee title, for example the United States (Simpson 1976).

<sup>3</sup> If a person suffers damages due to an official in the Deeds Registry not acting in good faith or not exercising reasonable care and diligence, the state is liable (Deeds Registry Act 47 of 1937, s. 99).

The Alienation of Land Act 68 of 1981 and the regulations in terms of the Deeds Registry Act 47 of 1937 (s. 6) stipulates the legal requirements regarding the drafting of the sales agreement. However, with regards to low-cost property, e.g. state-subsidised property, Downie (2012) specifies ten requirements for a sales agreement generated from her experience as a conveyancer and researcher. The requirements are:

1. It must be a written agreement.
2. The agreement must include the name(s) of the seller(s).
3. The agreement must include the name(s) of the buyer(s).
4. The property must be clearly described.
5. The purchase price and the time of payment must be stated.
6. It must contain a provision that the buyer can cancel the contract within five days (cooling-off period<sup>4</sup>).
7. The agreement must be dated.
8. The agreement must be signed by the seller(s) and buyer(s).
9. The signatures must be witnessed by two witnesses or a commissioner of oaths.
10. It must also be clear from the agreement that the seller(s) and buyer(s) understand that it is an agreement to sell the property.

Once the Deed of Sale is signed, the seller appoints a conveyancer to transfer the property<sup>5</sup>. The conveyancer investigates the title (referred to as a Deed Registry search) for any title conditions that may prevent the sale. The conveyancer also collects documents from the seller and buyer. These include identity documents and proof of marital status and solvency. Additional documents are also required for FICA<sup>6</sup> (Financial Intelligence Centre Act 38 of 2001) compliance.

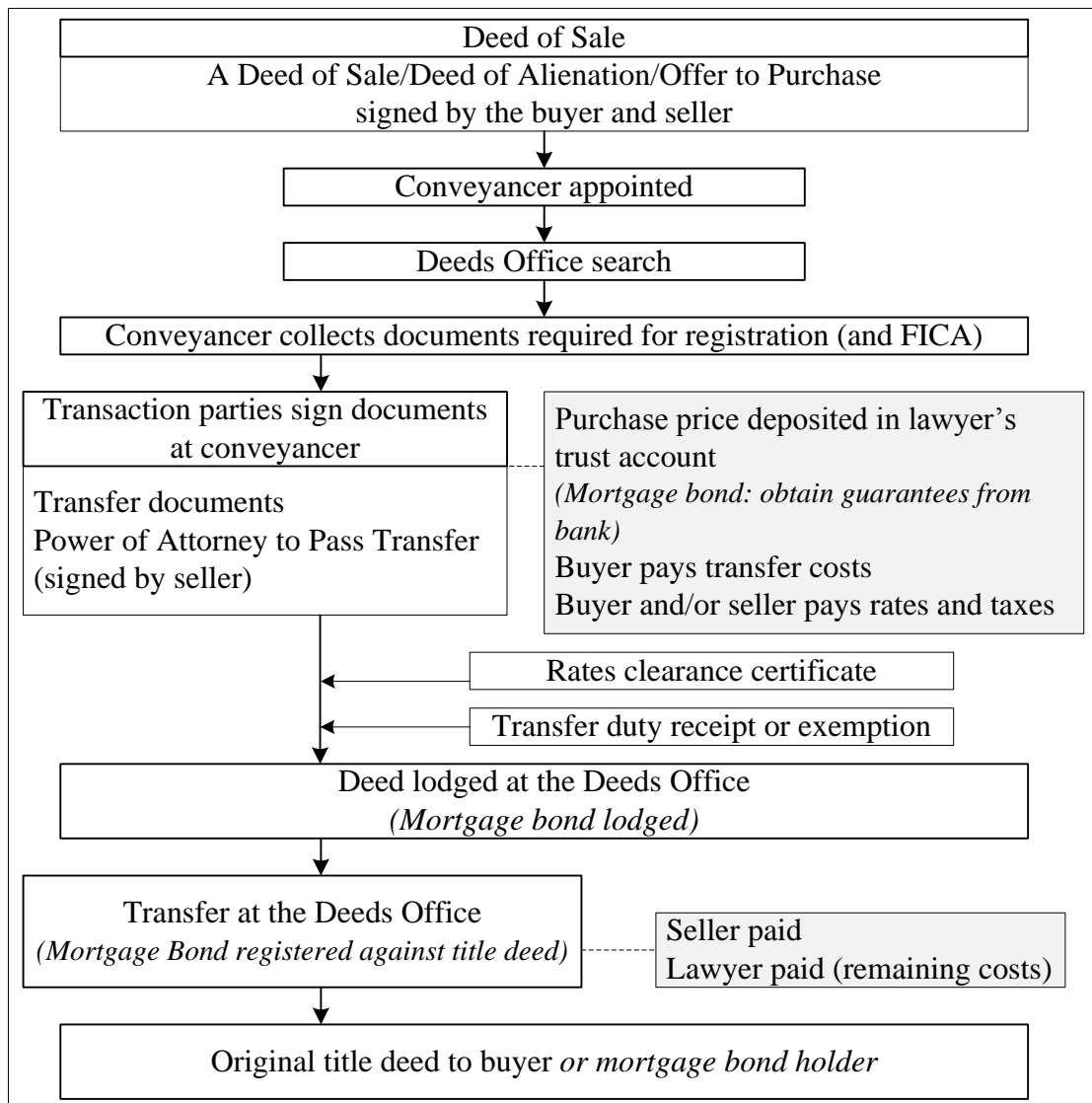
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<sup>4</sup> Alienation of Land Act 68 of 1981, s. 29A. The five days cooling-off only applies if the property is purchased for less than R250,000.

<sup>5</sup> A conveyancer may be appointed earlier in the process when the Deed of Sale is drafted

<sup>6</sup> The Financial Intelligence Centre Act 38 of 2001 was passed to prevent unlawful financial activities and money laundering. In terms of the act, an Accountable Institution has to obtain proof of residence and verify the identity of a client (FICA compliance). All attorneys (including conveyancers) are deemed to be Accountable Institutions according to the act (Schedule 1).

The seller and buyer then sign the transfer documents. One of the transfer documents is a Power of Attorney, which permits the conveyancer to act for the seller when transfer occurs at the Deeds Registry. In addition, the buyer deposits the purchase price into the conveyancer's trust account, unless the buyer is financing the transaction with a mortgage bond. In the case of a mortgage bond, the bank provides guarantees that payments will occur. The buyer also pays the transfer costs.



**Figure 2.1: Simplified conventional registration process flow (Shisaka 2004, Deeds Registry Act 47 of 1937, Alienation of Land Act 68 of 1981)**

In terms of the Local Government: Municipal Systems Act 32 of 2000 section 118, a property transfer may not be registered without a rates clearance certificate that is issued by the municipality. The certificate is usually issued once all the amounts charged by the municipality in relation to the property being sold during the two years preceding the certificate application are paid. These amounts include, for example, the taxes (property rates) and municipal service fees (water, electricity etc.). The seller is responsible for these amounts, unless the buyer occupies the house before registration occurs, in which case the buyer is responsible for a *pro rata* share of the money owed to the municipality.

The conveyancer usually applies for a transfer duty receipt after the transfer documents are signed. This is the tax on the property transaction. Transfer duty can constitute a major portion of the transfer costs. From March 1999 to February 2002 the transfer duty was 1% on a purchase price less than R70,000; but since March 2002 properties with a purchase price of less than R100,000<sup>7</sup> have been exempted from transfer duty (South African Revenue Service 2007).

The title deed (and mortgage bond documents if applicable) is then lodged at the Deeds Registry where the deed is examined and executed before the Registrar. The Registrar checks documentation and procedures that prove a seller is indeed entitled to sell. The moment the Registrar affixes his or her signature to the deed, the property is transferred. At the same time the mortgage bond is registered against the title deed.

Finally, the purchase price is paid to the seller from the lawyer's trust account or the bank transfers the money in case of a mortgage bond. At this stage the lawyer is also paid any outstanding costs and the title deed is given to the buyer or the mortgage bond holder.

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<sup>7</sup> The maximum purchase price exempted from transfer duty increased over the years and by March 2006 it was increased to the current level of R500,000 (South African Revenue Service 2007, 2011).

All the steps in the process are designed to lower the risks involved when dealing in property as well as ensuring the currency and correctness of the records in the land registration system. From the buyer's perspective, the safeguards include:

1. The Deed of Sale binds the buyer and seller in a contractual relationship. However, if the seller decides to renege on the contract even though the buyer has met all the conditions of the contract, and the buyer wants to continue with transfer, the buyer will have to take the case to the High Court to enforce the transfer (Alienation of Land Act 68 of 1981, s. 24(2)).
2. The conveyancer confirms, using the title deed, that the seller is legally permitted to sell and that there are no restrictions or other conditions that may prevent the sale. This is also re-confirmed in the Deeds Registry (Deeds Registry Act 47 of 1937, s. 3(1)(b)). These procedures assist in preventing fraudulent sales.
3. The conveyancer holds the purchase price (if paid in cash) in a trust account (Attorneys Act 53 of 1979, s. 78(1)). The money is paid to the seller only once transfer occurs, thereby lowering the buyer's financial risk.

### ***2.2.2 The financial costs of transferring a property***

There are a number of financial costs involved in the transfer of property. These costs vary depending on the year in which the property was sold, the purchase price, the conveyancer's costing and the complexity of the transfer. This research considers sales from 2001 to 2010 and for the purposes of this section, an example of a sale in 2006 is used. Also, the simplest type of transfer is used; i.e. one where the seller has a title deed and is the owner of the property; the buyer pays the purchase price in a one-off cash payment; and the seller is not in debt to the municipality.

Table 2.1 illustrates the costs involved in transferring a 28m<sup>2</sup> house on a 140m<sup>2</sup> parcel, purchased for R20,000 in 2006:

Conveyancer's fees (Recommended tariff)	R 1,250
Transfer duty	R 0
Deeds Registry search	R 200
Deeds Registry Fee	R 55
Rates clearance certificate	R 63
Postage and small, everyday expenses	R 350
Agreement of Sale (Deed of sale)	R 200
FICA (Financial Intelligence Centre Act) fee	R 300
VAT (14%)	R 301
<b>Total</b>	<b>R 2,719</b>

**Table 2.1: An example of transfer costs (Participant 016)**

The transfer fees are charged according to the guidelines published by the Law Society of South Africa for the conveyance of immovable property and calculated according to a sliding scale.

The tariffs are only a guideline and a conveyancer may change fees. If the conveyancer needs to draft a Deed of Sale, additional costs apply.

2002	
R18,000 or less	R 760
Over R18,000 up to and including R30,000	R 1,250
Over R30,000 up to and including R45,000	R 1,500
Over R45,000 up to and including R70,000	R 1,800
Over R70,000 up to and including R80,000	R 2,500
2009	
R80,000 or less	R 3,200

**Table 2.2: Recommended transfer fees for property purchased for less than R80,000 (Law Society of South Africa 2002, 2009)**

The recommended transfer fees changed twice between 2001 and 2010, and Table 2.2 lists the two sets of fees for property sold for less than R80,000. Using the example in Table 2.1, the 2009 change in tariff would add an additional R1,950 to the transfer costs if the property was sold for the same price in 2009.

The Deeds Registry fee is also determined according to a sliding scale. In 2006, the Deeds Registry fees for a property purchased for less than R150,000 was R55 (Government Gazette 2000). This fee increased to R70 in 2008 (Government Gazette 2008). The conveyancer calculates the Deeds Registry search fee according to the time spent on the search.

The rates clearance certificate cost is an administrative fee and is determined by the municipality. The postage and other petty costs include telephone costs, courier fees etc. Value Added Tax (VAT) is also payable on all disbursements.

Therefore, the transfer of a property bought in 2006 for R20,000 would have cost the buyer approximately R2,700. Adjusting the cost by only adding the increases in transfer and Deeds Registry fees, the transfer costs for the purchase of the same property in 2009 are estimated at R4,700, representing a 74% increase.

### **2.3 The South African social housing programme**

In 1994, the South African government adopted the National Housing Policy which is documented in the White Paper on Housing (Department of Housing 1994, Tissington 2011). The macro socio-economic policy framework, Reconstruction and Development Programme (RDP) (now abandoned) set the targets for state-funded housing development. The National Housing Policy and the RDP established the National Housing Subsidy Scheme through which the government provides one-off capital grants to subsidise housing. In 2004 the government introduced the Breaking New Ground housing policy as an amended framework for housing development (Department of Housing 2004). However, the Housing Act 107 of 1997 remains the primary piece of legislation underlying the government's housing programmes.



The most commonly used subsidy before 2002 was the project-linked subsidy (Royston and Ambert 2002). The project-linked subsidy is allocated to a group of households who pool their individual subsidies. Usually the developer in charge of the project applies for the subsidy on behalf of the beneficiaries and the funds are then used to build houses and infrastructure, and to buy land. Importantly, a condition of the subsidies is the transfer of ownership to the beneficiaries.

Beneficiaries must comply with certain criteria to qualify for the subsidy. The National Housing Code (Department of Human Settlements 2012) lists the criteria as:

- The applicant must have a spouse or co-habiting partner; or, if single, have dependants (for example children or family members).
- The applicant must be a South African citizen or permanent resident and older than twenty one.
- The applicant's maximum monthly household income must be less than R3,500.
- The applicant (or anyone else in the household) may not have received a government subsidy previously (with some exceptions).
- The applicant must be a first-time home owner (with some exceptions).

Although the criteria have been refined since the start of the subsidy programmes, the fundamental aspects have remained the same.

To support an application, an applicant must possess a South African Identity Document and provide documentary evidence such as proof of income or an affidavit confirming co-habitation. The Department of Human Settlements use the subsidy records and Deeds Registry records (registration system) to confirm first time home ownership.

<b>Income group<sup>8</sup></b>	<b>Subsidy (from 1 April 1999)</b>
R 0 – 800	R 16,000
R 801 – 1,500	
R 1,501 – 2,500	R 10,000
R 2,501 – 3,500	R 5,500

**Table 2.3: Government subsidy eligibility by income group: Project 2001**

Table 2.3<sup>9</sup> shows the subsidies applicable to the case study in this research. According to the subsidy scheme, beneficiaries who do not qualify for a full subsidy are required to make a contribution to cover the shortfall. Also, the municipality sometimes contributes financially to the subsidy, or donates land. Furthermore, the subsidy may be increased by the government if the housing development is situated on land which requires additional expenditure because of adverse geo-technical conditions.

#### **2.4 The eight-year sales restriction**

The eight-year sales restriction prevents owners who benefitted from a subsidy from selling within eight years of acquiring the house. A description of the restriction is important for two reasons. First, the eight-year sales restriction is referred to in the literature review and second, it affected the sale of state-subsidised properties since 2002. Also, although a restrictive sales clause in terms of section 10A and B of the Housing Act 107 of 1997 was not inserted in the title deeds of the case study project properties, a similar sales restriction was used (refer to section 6.4).

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<sup>8</sup> Income is calculated as the combined income of household head and spouse.

<sup>9</sup> The subsidy amount changed at various times since its introduction and by 2008/9 the full subsidy was increased to R43,506 (Department of Human Settlements 2012).

The restriction on sales<sup>10</sup> was introduced in 2001 with an amendment to the Housing Act 107 of 1997 (Housing Amendment Act 4 of 2001). The Ministry of Housing (2000) motivated the amendment by citing information that houses were being sold for much less than their value and crime syndicates were forcing people who owed them money to sell their houses to the syndicate, who then sold the houses for profit (Ministry of Housing 2000). Another government concern was the sale-in-execution of state-subsidised houses by municipalities to recover service arrears (City Press 2001). The Ministry of Housing (2000) argued that all these activities compounded the housing backlog<sup>11</sup>.

The restrictive sales amendment includes two sections: 10A “Restriction of voluntary sale of state-subsidised housing” and 10B “Restriction of involuntary sale of state-subsidised housing”. Both sections restrict the sales of subsidised houses or properties for eight-years<sup>12</sup>. If an owner or a creditor wants to sell, they must give the provincial housing department first option. If the provincial housing department exercises the option, the owner is not paid for the house, but regains the possibility of receiving a housing subsidy. In the case of a creditor, the housing department has the right to buy the property at a price equivalent to, or less than, a housing subsidy. The sales restriction applies to the original beneficiary and the beneficiary’s heirs.

Both sections state that alienation of the property may not occur “within a period of eight years from the date on which the property was acquired by that person” (Housing Act 107 of 1997, ss. 10A and B). The important word in this excerpt is “acquired”, which is not defined by the Housing Act 107 of 1997 or the Alienation of Land Act 68 of 1981. Date of acquisition may be interpreted as the day the beneficiary occupies the house, when the deed of sale is signed or transfer occurs. The various interpretations have different implications.

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<sup>10</sup> The sales restriction does not affect properties sold or transferred before 1 February 2002. (Chief Registrar 2005)

<sup>11</sup> Some government and municipal officials have also changed their interpretation of the sales restriction by including the letting of state-subsidised houses by beneficiaries (Matlala 2011, SAPA 2010, Tissington *et al.* 2010). These officials argue that beneficiaries let their houses and return to informal settlements, thus it becomes impossible to eradicate informal settlements. This inclusion of a restriction on renting is not part of the restrictions in the Housing Act 107 of 1997 or any other legal regulation.

<sup>12</sup> A bill to amend to Housing Act was introduced in 2006 (Housing Amendment Bill 2006). The bill proposes the reduction of the moratorium period from eight to five years. The bill has not been passed (as of December 2012).

Gordon *et al.* (2011) estimate that 46% of the title deeds of subsidy beneficiaries in the Western Cape are outstanding. Therefore many beneficiaries do not have title deeds even though they have occupied their houses for longer than eight years. If the beneficiary receives a title deed after the eight years, and the commencement date of the sales restriction is judged to be the registration date, then the beneficiary would have to occupy the house for sixteen years before it is legal to sell. Although this is an extreme example, it is a possible interpretation of the restriction and illustrates one of the problems with the form of the restriction.

In the Western Cape, no reports of the national, provincial or local government enforcing the restriction on a large scale could be found between 2001 and 2007. In 2010 a survey of Samora Machel suburb in Cape Town, found that 235<sup>13</sup> of 4005 houses were illegally occupied (Phaliso 2010a, 2010b, Boyi 2010). Reports indicated that the illegal occupations were a result of subsidy fraud and the sale of houses by the original beneficiaries within the eight-year restrictive period. Although not specified, it is likely that these houses were sold off-register. Mandela Park in Cape Town was also surveyed and a similar situation was reported (Boyi 2010).

These findings resulted in investigations by the Directorate for Priority Crime Investigations in the Du Noon neighbourhood of Cape Town under a parliamentary directive (Luhanga 2011). However, the focus of the investigations was the subsidy fraud that occurred with the original allocation of houses and houses sold in contravention of the restrictive sales clause were excluded. No other examples or investigations were found regarding the eight-year sales restriction.

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<sup>13</sup> There is an important qualification to this figure; 1,222 of the houses could not be surveyed because officials were barred, specific information not divulged or there was no one home (Phaliso 2010b).

## **2.5 Summary**

This chapter described the registration system and the process of transferring a property that has been sold. The description highlighted the safeguards built into the processes that protect the buyer. The transfer costs were also explained.

The South African government's social housing programmes were briefly introduced with particular focus on the eight-year sales restriction.

These discussions inform the findings and results in the case study presented in Chapters 6 and 7, and provide background to the literature review in the next chapter.

## Chapter Three: Literature Review

### 3.1 Introduction

The objective of this dissertation is to develop theory explaining land registration use in a state-subsidised housing estate in a rural South African town. This chapter positions the study in relation to existing research and confirms that a literature gap exists. The literature review also demonstrates that current theory is limited and argues that even though there is a growing body of research in South Africa about the access of the urban poor to land markets, these studies do not consider land registration use as a central concern.

While the literature review is mainly confined to state-subsidised housing in South Africa, this limitation does not exclude many research projects examining land registration use in urban areas globally. In fact, only one study of St. Lucia in the Caribbean was identified (Barnes and Griffith-Charles 2007). That study investigated property deformalization (registered property being transferred off-register) and found that it occurred predominantly through the inheritance of family land. The study did not conduct an in-depth exploration of land registration used to secure sales transactions.

This review, firstly, discusses theory closely aligned with this research. This includes two cadastral system usage studies (Barry 1999, 2005), followed by a recently proposed three-stage land registration usage theory (Barry *et al.* 2012). In the cadastral systems usage studies, a land information system (e.g. a land registration system) is regarded as a component of the cadastral system (Barry 1999, 2005). However the cadastral system usage studies primarily investigated rental land information systems and the future use of the registration system by potential homeowners (Barry 1999, 2005). Although the research did include one case study area with registered owners, no off-registered sales were identified. The three-stage theory does specifically address land registration use, but it is proposed as a general theory applicable to a number of contexts where land registration is introduced as part of titling programmes (Barry *et al.* 2012).

Secondly, the review demonstrates that there are land market studies that consider registration usage as a component, but registration is incidental to the main research objectives. There are also economic studies proposing conceptual hypotheses explaining off-register sales, but these hypotheses lack empirical support. Thirdly, land tenure research, that includes a focus on registration in contexts other than state-subsidised estates, is described.

### 3.2 The three-stage land registration usage theory

The recently introduced three-stage land registration usage theory (Barry *et al.* 2012) is a continuation of research using the Theory of Planned Behaviour to predict cadastral system use (Barry 2005). In turn, the cadastral system usage study is based on research in Cape Town investigating the effectiveness of a cadastral system in a rapidly changing context (Barry 1999). This section will first discuss the Cape Town studies as precursors to the three-stage land registration system usage theory. Figure 3.1 illustrates the theory and contexts associated with the various studies.

	Cadastral system usage		Registration system usage
Theory	Barry (1999)	Barry (2005)	Barry <i>et al.</i> (2012)
	Hypotheses developed	Adaptation of Theory of Planned Behaviour	Three-stage theory
Context	Cape Town: Informal settlements; site & service schemes; private housing stock	Cape Town: Informal settlement upgrade	General

**Figure 3.1: Cadastral and registration system use: Theory and context**

As mentioned, the first Cape Town study investigated a cadastral system in a rapidly changing context (Barry 1999). The case studies included an informal settlement, two site-and-service

schemes (a subsidised serviced parcel without a house) and an established housing estate. In some instances the study was limited by the volatile contexts of the research sites.

At the time of the research, the parcels in the informal settlement and the site-and-service schemes were not registered and a rental land information system or local-level register was in operation (Barry 1999). In both cases, the residents were expecting to become registered owners once the scheduled formalisation of their rights occurred. The research assumed that land registration use can be reliably predicted by understanding the use of a rental land information system or local-level register of expectative rights.

The study of the informal settlement and the site-and-service schemes generated the hypothesis that registration use is likely in a socio-political environment that encourages registration (Barry 1999). A second hypothesis states that the rental land information system was used because the land holders perceived it as legal and legitimate (Barry 1999). No evidence was found in the Cape Town study to support the hypothesis that the cost of using the system, without other contributory factors, may have affected the incidence of use. The Cape Town study also proposed hypotheses about the non-usage of the rental land information system. These hypotheses speculated that the rental land information system was not used, because:

- the system's design, implementation and operations management was inadequate;
- the residents did not see the advantages in using it; and
- the residents wished to "hide transactions from factions within the community such as street committees and warlords for a variety of reasons". (Barry 1999)

Notably, the study does not specify how these issues were perceived by land holders.

In the site-and-service scheme, where a local-level register was used, there was a moratorium according to the internal rules agreed to by the community that prohibited the sale of land (Barry 1999). The study speculated that the moratorium denied access to formal transfer processes and, thereby, encouraged informal transfers (Barry 1999). Since both restrict sales, parallels may be drawn between this moratorium and the restrictive sales clause that prevents the sale of state-subsidised houses for eight years (refer to section 2.4).



The Cape Town study also included a case study of a neighbourhood with municipal rental housing and housing with registered private owners (Barry 1999). The study did not find evidence of off-register transactions, and this was ascribed to the high proportion of mortgaged houses (Barry 1999). It was argued that the involvement of a third party, the mortgage lender, prevented off-register sales since if the house was sold off-register and the mortgage payments stopped, the house will be repossessed (Barry 1999). The study also identified the socio-political stability in the case study environment as a contributing factor to registration use (Barry 1999).

The current research differs from the Cape Town study (Barry 1999), because it studies land registration use by buyers in a state-subsidised housing estate where the properties are registered. In contrast, the Cape Town study (Barry 1999) researched the use of rental land information systems and a local-level register. Property ownership was registered in the one case study; however, most houses were mortgaged, whereas very few houses are mortgaged in state-subsidised housing estates (Payne *et al.* 2009).

In a continuation of the Cape Town study, the Fishbein and Ajzen's (2010) Theory of Planned Behaviour (TPB) was adapted to predict cadastral system use and it was tested within the context of informal settlement upgrading (Barry 2005). The Theory of Planned Behaviour (Fishbein and Ajzen 2010) is also incorporated into the theoretical framework of this dissertation and is discussed in detail in Chapter 4. Suffice it to note in this review that the informal settlement upgrade study postulated that land tenure compatibility, usefulness and ease of use affects the residents' decision to use the cadastral system. In turn the residents evaluate compatibility and usefulness of the cadastral system in relation to their desired land tenure system. Ease of use is self-explanatory.

The informal settlement upgrade study further elaborates that the decision to use a cadastral system may be influenced by family and peers, and powerful individuals, and that cadastral system use may also be constrained or assisted by power and resource facilitating conditions (Barry 2005). Power facilitating conditions "prevent or encourage . . . use of the cadastral system" (Barry 2005, p. 127). Resource facilitating conditions include "financial resources, time

required to use the system, and readiness of access to the registration system” (Barry 2005, p. 128). These concepts are discussed further in section 4.4 in relation to the theoretical framework.

The cadastral system usage study (Barry 2005) represents an exploration of the application of the Theory of Planned Behaviour. However, again the findings of the study are based on the beliefs of participants who are not registered owners. The current research aims to include interview data from participants who are registered owners or who purchased registered properties.

The three-stage land registration usage theory (Barry *et al.* 2012) expands on the theories described above. The theory is underpinned by systems theory, social change theory, the Theory of Planned Behaviour and case studies of land registration usage. The first stage of the theory proposes a general causal-process system to establish “how people secure tenure and land registration within the context of local and regional politics, social change and social inequalities” (Barry *et al.* 2012, p. 2) (see Figure 4.6). The second stage is an adaptation of the Theory of Planned Behaviour and the Technology Acceptance Model and is an extension of the theory developed in the cadastral system usage study (Barry 2005) discussed above (see Figure 4.7). The third stage is an explanatory and predictive land registration system usage theory incorporating specific constructs and relationships (see Figure 4.8).

The three-stage land registration usage theory is proposed as general land registration usage theory applicable to a number of contexts where land registration is introduced. For example, it was tested in a peri-urban area in Ghana where both a customary land tenure and registration system are in operation (Barry *et al.* 2012). In this dissertation the focus is on developing theory specifically within state-subsidised housing estates in a South Africa town.

The three-stage theory was published after the development of the theoretical framework for this investigation. However, in Chapter 4 the three-stage theory is discussed in detail and used to evaluate the decisions made in relation to the development of the theoretical framework of this dissertation.

The next section discusses land market studies that researched land registration use in state-subsidised housing estates, although land registration use was not a central concern.

### 3.3 Market studies

Various land market studies in South Africa identify off-register sales. However, the interaction between users and the land registration system are incidental to the main objectives of these studies, which were to understand the interaction between the poor and urban land markets. The studies do advance hypotheses explaining registration use, but, in many instances, these are speculative or based on anecdotal or limited evidence. In addition, few studies base findings about land registration use on information from state-subsidised housing estate residents. Figure 3.2 provides a summary of the various studies in terms of theory and context.

Study	Theory	Context
Township Residential Property Market project: Shisaka 2003a, 2003b, Nell <i>et al.</i> 2004	Speculative causal factors identified	Subsidised housing estates; informal settlements; pre-1994 housing stock; non-subsidised housing stock
How the poor access, hold and trade land: Marx 2007a, 2007b, Gordon 2008, Smit 2008	Speculative causal factors identified	Subsidised housing estates; informal settlements; pre-1994 housing stock
Mooya & Cloete 2007	Conceptual hypotheses	Urban informal property markets
Marx & Rubin 2008a, Payne <i>et al.</i> 2009	Causal factors identified	Subsidised housing estates; informal settlement; in-situ upgrade project
Vorster & Tolken 2009	Causal factors identified	Subsidised housing estates
Lemanski 2010	Context based causal factors identified	Subsidised housing estates

**Figure 3.2: Market studies summary: Theory and context**

In the most recent study, Lemanski (2010) investigated the link between land titles and poverty alleviation in Westlake Village, Cape Town. The study found few off-register sales in the area, a fact ascribed to three causal factors particular to this case study (Lemanski 2010). First, a local councillor provided free or cheap conveyancing services and legal advice, which reduced the cost and complexities of registering transactions. Second, many of the properties were bought by employers for employees and the transactions registered. The study argued that registration occurred because the employers were part of the formal property market and they were aware of its advantages. Third, the property title deeds in Westlake Village did not include a clause restricting the sales (refer to section 2.4) and for this reason residents did not view sales as an illegal activity that had to be concealed from the government.

The Western Cape Occupancy study (Vorster and Tolken 2009), a provincial government-commissioned study in 2009, investigated the impact of state-subsidised housing projects on the lives of beneficiaries and communities. The survey included 2,965 people, 9% whom bought houses. The study associated these sales with ignorance of land registration, the restrictive sales clause (refer to section 2.4) and the need for a quick sale. However, these findings were based on in-depth interviews with five estate agents and nine municipal officials, and not the quantitative survey of 2,965 people.

Between 2003 and 2009, three large scale studies were conducted in South Africa. The studies by FinMark Trust and Urban LandMark (research and advocacy organisations) are focused on land markets, and a study managed by Geoffrey Payne and Associates was concerned with the social and economic impacts of titling.

The Township Residential Property Market (TRPM) project was managed by FinMark Trust. It is a land market study that investigated six sub-markets in four metropolitan areas; Johannesburg, Ekurhuleni, eThekweni and Cape Town metropolitan areas (Shisaka 2003a, 2003b, Nell *et al.* 2004). State-subsidised housing was one of the sub-markets and secondary transfers (registered and off-register) were identified, but the study did not investigate why these occur. The TRPM report did, however, conclude that registration use will be supported by

reducing transfer costs, educating home owners, increasing availability of information and repealing the restrictive sales clause (refer to section 2.4).

The Urban LandMark project explored how the poor access, hold and trade land in Cape Town, Ekurhuleni and eThekweni metropolitan areas using quantitative surveys and qualitative interviews (Marx 2007a, 2007b, Gordon 2008, Smit 2008). The nine research sites included three state-subsidised housing projects. A limitation of this study was that the quantitative surveys only included a total of thirteen buyers and none of the participants in the qualitative interviews had bought a state-subsidised house. The authors (Marx 2007b, Smit 2008) speculated that off-register transactions occurred because of expensive transfer costs and the complexity of the registration system. In a visioning workshop hosted by Urban LandMark and attended by other NGOs, Civil Society Organisations and key thinkers, the main constraints in transferring properties were identified as the lack of legal title, delays in the transfer to subsidy beneficiary, obtaining municipal rates clearance certificates, the restrictive clause (refer to section 2.4), the lack of service providers and expensive transaction costs (Nell 2007).

The third study was conducted in the Ekurhuleni metropolitan area (Marx and Rubin 2008a) as part of a larger study that investigated the social and economic impact of land titling in low income communities in South Africa and Senegal (Payne *et al.* 2009). An informal settlement, an *in situ* upgrade project (partly state-subsidised) and a state-subsidised project served as the Ekurhuleni research sites. This study suggested that the restrictive sales clause, along with the “cumbersome, expensive and time-consuming nature of the housing transfer process” caused off-register sales (Marx and Rubin 2008a, p. 134). As part of the larger research project Payne *et al.* (2009) found that poor households are excluded because of a lack of access to tools, instruments and systems required to use the registration system effectively, and that the legal system favours affluent households.

Mooya and Cloete (2007) developed a conceptual framework based on New Institutional Economics. According to this framework the economic reasons for off-register sales include affordability of registration and ongoing service costs and land taxes (Mooya and Cloete 2007).

The argument is that owners are forced into the informal market because the transaction costs are too high in the formal market. These transaction costs include search and information costs; bargaining and decision costs; and supervision and enforcement costs. Mooya and Cloete (2007) also highlight the effect of institutions on economic performance because of their influence on cost of exchange. Although the conceptual framework details the costs encountered by a buyer attempting registration (and as home owner), its narrow focus excludes other factors, such as the facilitation role of external agents reported by Lemanski (2010).

Viewed together, the land market literature suggests various explanations for land registration use (see Figure 3.3); however, these are speculative or based on limited empirical evidence.

<i>Causal factors</i>	Lemanski 2010	Vorster & Tolken 2009	TRPM: Shisaka 2003a, 2003b, Nell <i>et al.</i> 2004	Marx 2007a, 2007b, Smit 2008, Nell 2007	Marx & Rubin 2008, Payne <i>et al.</i> 2009	Mooya & Cloete 2007
Transfer Costs						
Restrictive sales clause						
Access to legal services						
Time (quick sale; transfer process slow)						
No title deed						
Ignorance / Education / Information						
Complexity of registration system						
Rates clearance certificate delays						
Employer assisted						

**Figure 3.3: Factors affecting land registration use as identified in market studies**

The causal factor shared by most of the studies is cost, followed by the restrictive sales clause. Other causal factors related to the registration process include access to legal services, restricted time scale because the seller wants to leave the area, unavailability of the title deed to use in registration, rates clearance certificate delays, and the complexity of the registration system. In

Figure 3.3 three of the causal factors relating to knowledge and information were grouped together, including ignorance of registration, education and access to information. Another causal factor, identified by Lemanski (2010), is assistance by an external agent such as an employer. This list of factors may be elaborated by considering land tenure research.

### **3.4 Land tenure research**

Land tenure research in South Africa about land registration use is limited. The studies that are available argue that there are social and administrative reasons for off-register sales. These findings were based on data from areas with pre-1994 housing stock. However, these studies do provide additional insight into land registration use.

The studies argue that cultural practices and local level power relations have an impact on land tenure (Manona 1987, Barry 1999, Kingwell 2008, Marx and Rubin 2008b). In some cultures the home is regarded as being held by the family and customary practices may recognise a different owner or holder of rights than official systems (Manona 1987, Barry 1999, Kingwell 2008, Marx and Rubin 2008b). Therefore the studies concluded that there is a disconnection between the *de facto* and *de jure* processes, where the registration system is not used or where its use is likely to cause disputes. Marx and Rubin (2008b) also point to administrative factors, such as dysfunctional, overlapping or corrupt administrative systems, that result in the registration system not reflecting the situation on the ground.

Both the social and administrative reasons described above are linked to the loci of power and their practices. Marx and Rubin (2008b, p. 103) define the loci of power as “where the main decision making power lies”. This adds to the list of research themes that are explored herein and also informs the theoretical framework as described in section 4.3.1.

### **3.5 Summary**

The literature review confirms the research gap noted in section 1.2.3. Existing theory does not address land registration use in the context of state-subsidised housing estates, which may exhibit a number of characteristics not present in other contexts. Other research advances hypotheses about registration use, though the central concern of the studies was land markets. Also, in many instances, the hypotheses and casual factors are speculative or based on anecdotal or limited evidence. In addition, with the exception of the Vorster and Tolken (2009) study, most research is conducted in metropolitan areas, while the present study focuses on a rural town.

It is evident that a research gap exists, and that there is limited theory and inadequate understanding of land registration use in state-subsidised housing estates. The causal factors affecting registration use drawn from the land market and land tenure studies are considered with respect to the case study findings in Chapter 8. The next chapter develops a theoretical framework to address the research objectives.



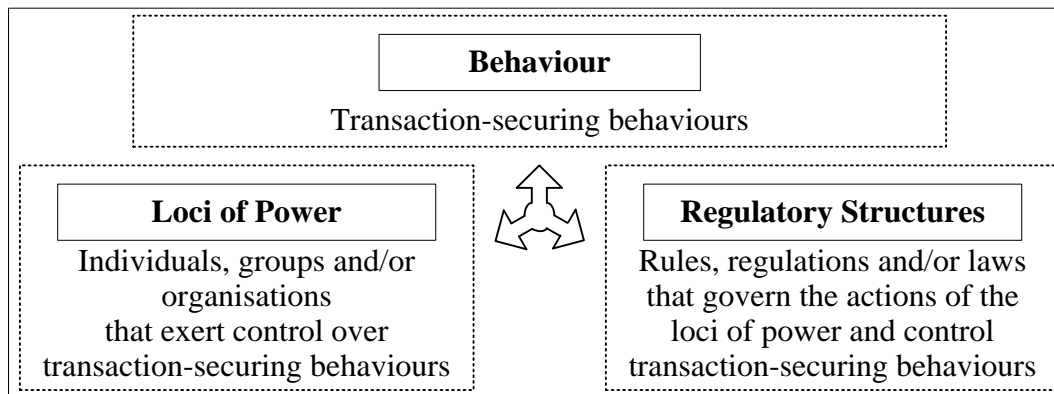
## Chapter Four: **Theoretical Framework**

### **4.1 Introduction**

This chapter discusses the theoretical framework to ensure understanding of the concepts and assumptions underlying the theoretical approach and the analysis of the case study. The theoretical framework also guides the methodological decisions, theoretical development and situates this research in the context of existing theory.

This section introduces the theoretical framework, which was developed to address the research objective, that is, to develop theory explaining how and why property buyers in the state-subsidised housing estate decide to transact within or outside official systems. The section argues that the Theory of Planned Behaviour is a suitable theory to analyse and understand transaction-securing behaviour. It also explains why the loci of power and regulatory structures components were incorporated in the theoretical framework. The chapter continues with describing the assumptions and constructs of the Theory of Planned Behaviour. Then the loci of power and regulatory structures are discussed. The chapter concludes by comparing the theoretical framework to other research that used the Theory of Planned Behaviour to understand land registration usage.

The theoretical framework describes a transactional environment with three components: the behaviour, the loci of power and the regulatory structures (see Figure 4.1). The behaviour component includes the transaction-securing behaviours being evaluated by buyers, e.g. registration or off-register transactions. The loci of power are individuals, groups and/or organisations that exert control over the transaction-securing behaviour. The regulatory structures are the rules, regulation and/or laws that govern the actions of the loci of power and control the transaction-securing behaviour. The ensuing dynamic involves the interaction of these three components as well as their respective internal changes, effectively transforming the transactional environment.



**Figure 4.1: Theoretical framework**

The Theory of Planned Behaviour, developed by Fishbein and Ajzen (1975, 2010, Ajzen 1991, 2005), is used to explore the behaviour component of the framework. The Theory of Planned Behaviour (TPB) is widely used across disciplines and over 1,000 journal articles have used the TPB as a theoretical approach (Fishbein and Ajzen 2010). The theory, which is designed to accommodate a variety of human social behaviours, is primarily intended to predict behaviour; however it can also be used to explain behaviour (Fishbein and Ajzen 2010).

The decision to include the TPB in the theoretical framework is supported by its use in cadastral system (Barry 1999, 2005) and land registration usage research (Barry *et al.* 2012). The cadastral system usage study determined that the TPB is limited as a prediction theory, but it found TPB useful in explaining cadastral system use (Barry 2005). Subsequently, the same TPB adapted cadastral system usage theory formed part of a three-stage land registration usage theory as discussed in section 3.2. The three-stage theory was tested in a peri-urban area of Accra, Ghana, where both a customary land tenure and registration system are in operation (Barry *et al.* 2012). The study suggested that the TPB stage of the three-stage theory does apply, but land registration, the core phenomenon, should be broadened to land tenure security given the political and social context of the Accra case study. The three-stage theory was introduced after the development of this study's theoretical framework. Therefore it was not used in the theoretical framework development, but will be discussed further in section 4.4.2.

An alternative theory to the TPB is the Technology Acceptance Model (TAM), a modified version of the Theory of Reasoned Action which preceded the TPB (Benbasat and Barki 2007). There is a substantial body of work that uses TAM to predict information system use, user acceptance in particular. However, TAM is not an appropriate theory in this instance because it excludes the influence of important characteristics and environmental factors particular to land registration systems. Generally, an individual uses a land registration system only a few times in a lifetime; in South Africa a conveyancer (lawyer) acts as an interface between the land registration system and the user; and the land registration system is controlled by legislation. Although a land registration system is an information system, these three fundamental characteristics distinguish it from, for example, business information systems.

Favouring the TPB over the TAM is consistent with Barry's (1999) argument that the Theory of Reasoned Action, on which the TAM is based, is too narrowly defined for use in the cadastral field. The Theory of Reasoned Action also assumes that users have behavioural control over their decisions (Ajzen 1991, 2005, Barry 1999), which may not be the case in state-subsidised housing estates. In addition, Benbasat and Barki (2007) argued that the adaptations to the TAM - specifically, in attempts to include social influences and facilitating conditions - have resulted in a model that is very similar to the TPB. These arguments support the decision to use the TPB as opposed to the TAM.

Other theories were considered as alternatives to the TPB. Taylor and Todd's (1995) Decomposed Theory of Planned Behaviour was one. However, this theory is inappropriate for this study, because it is too strongly associated with the acceptance of technology within an organisational situation. For example, the decision to register or not is unlikely to be affected by technology compatibility issues. Other theories included the evolutionary theory of land rights (Platteau 1996) and evolution of land markets (Wallace and Williamson 2006). But both of these theoretical frameworks are centred on the land market and this makes them inappropriate. In addition, neither framework extensively addresses the behaviour of the individuals in relation to the registration system.

The second component in the theoretical framework is the loci of power. As mentioned in section 3.4, Marx and Rubin (2008b, p. 103) define the loci of power as “where the main decision making power lies”. In this dissertation, the definition is extended to include individuals, groups and/or organisations that exert control over transaction-securing behaviours. Incorporating the loci of power in the theoretical framework is based on two premises. First, it assists in explicitly identifying the powerful groups or individuals associated with the transaction-securing behaviours. Second, Marx and Rubin (2008b, p. 6) argue that “land management reflects the distribution and allocation of power within urban societies” and land registration is included within Marx and Rubin’s (2008b) definition of land management. It follows that if the land management practices are identified, then the loci of power can be recognised and vice versa.

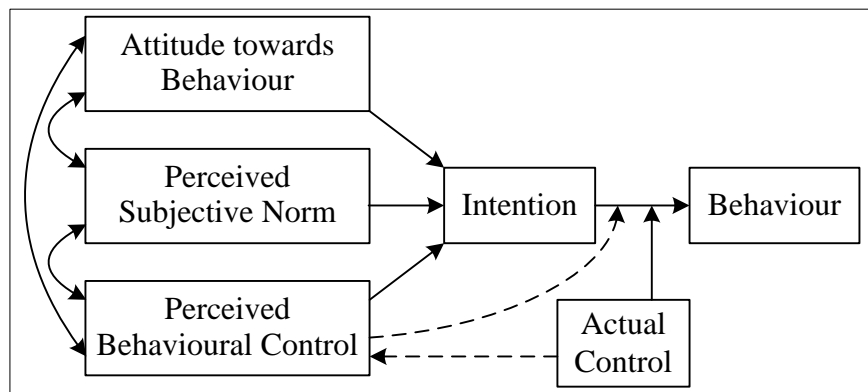
Regulatory structures form the third component in the theoretical framework. Because this research investigates land registration use, it is necessary to incorporate the regulatory structures that govern registration in the transactional environment. However, regulatory structures are not confined to legislation or registration and may include the rules and procedures followed by community-based organisations.

The theoretical framework is discussed in detail in the following sections. Firstly, TPB is briefly introduced. Secondly, the TPB is explained according to its constructs: behaviour, intention, attitude towards behaviour, perceived subjective norm, perceived behavioural control and actual control. Thirdly, the theoretical framework is discussed in terms of other theories in cadastral and land registration usage theory.

#### **4.2 The Theory of Planned Behaviour (TPB)**

The TPB is constructed on the premise that “human social behaviour is determined by a relatively small number of factors” related to the beliefs of people (Fishbein and Ajzen 2010, p. 39). All people hold beliefs about behaviours and, when individuals evaluate a particular behaviour, they are accessing (recalling) these beliefs.

Critically, the theory depends on salient beliefs. Salient beliefs are important beliefs about a given behaviour that are easily accessed by the individual (Fishbein and Ajzen 2010). Because these beliefs may be biased, incorrect or irrational, an action based on salient beliefs may not be rational, but it is assumed to be well reasoned (Fishbein and Ajzen 2010). The reliance on salient beliefs in the TPB also affected the methodological approach of this research (refer to section 5.4.2).



**Figure 4.2: The Theory of Planned Behaviour (Ajzen 2006)**

As shown in Figure 4.2, beliefs in the TPB are categorised according to three constructs: attitude towards behaviour, perceived subjective norm and perceived behavioural control (Fishbein and Ajzen 2010). Attitude towards a behaviour is informed by an individual’s personal beliefs about the performance and consequences of the behaviour (refer to section 4.2.4). The subjective norm is determined by the beliefs the individual forms about the behaviour through social influence (refer to section 4.2.5). Perceived behavioural control deals with the individual’s beliefs about his or her ability to perform the behaviour and whether the opportunity exists to perform the behaviour (refer to section 4.2.6).

Therefore if an individual holds a positive attitude towards a given behaviour, perceives normative pressure in favour of the behaviour and has control over the behaviour, he or she will form the intention to perform the behaviour (Fishbein and Ajzen 2010). The three antecedents of intention are interrelated and may carry different weights that may also vary between individuals or population groups (Fishbein and Ajzen 2010). In turn, the intention predicts behaviour.

In terms of the relative degree of importance of these three constructs, the perceived behavioural control may have an overwhelming influence on the evaluation of a behaviour. If the individual believes there are control factors that prevent the behaviour, the behaviour will not be performed (Fishbein and Ajzen 2010). This is also true for the link between perceived control and intentions; that is, if a person believes that there are no opportunities or resources to perform a particular behaviour, he or she will not be motivated to form behavioural intentions (Fishbein and Ajzen 2010).

A fourth construct, actual control, relates to the ultimate aim of the TPB, which is to determine an appropriate intervention to change behaviour (Fishbein and Ajzen 2010). Before a behavioural intervention is designed, an attempt is made to determine actual control as opposed to the population's perceived control. This is to ensure the most effective or appropriate design of the intervention. Actual control is discussed in section 4.2.6.

Generally the TPB predicts behaviour by quantitatively measuring intention and its preceding constructs, whereas this research aims to understand behaviour by qualitatively analysing behaviour. However, this is not unusual. TPB research projects use qualitative pilot projects to identify salient beliefs and test attitudes towards behaviour, perceived subjective norms and perceived behavioural control constructs. The approach used here is similar, except that TPB projects which conduct quantitative surveys are typically narrower and more focussed on a specific behaviour (Fishbein and Ajzen 2010). This research includes a wider range of behaviours when compared to quantitative TPB projects.

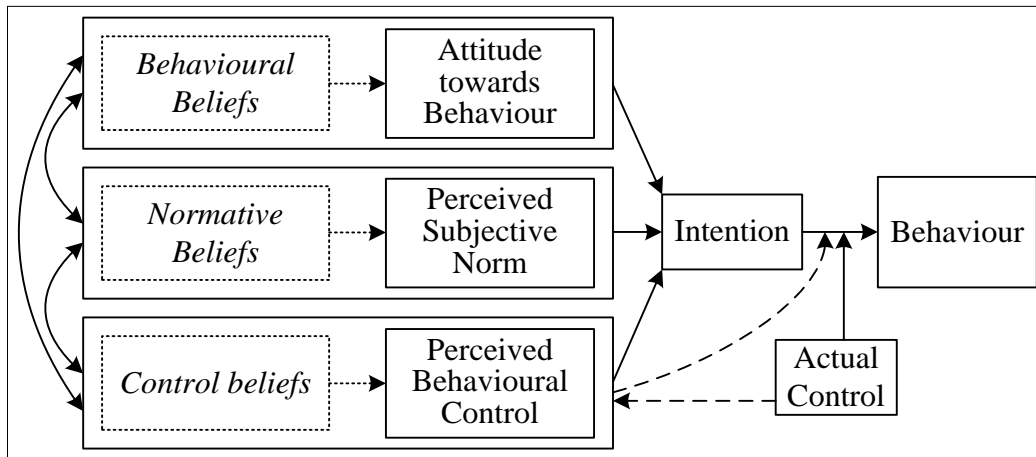
One challenge to the TPB is the accusation by researchers, particularly in the field of health, that the theory does not apply to non-Western cultures since decisions in Western cultures tend to be individualistic as opposed to group-based (Fishbein and Ajzen 2010). This needs to be considered within the context of this research project. Fishbein and Ajzen (2010) argue that, since the beliefs held in relation to a particular behaviour are based on data obtained from the population of interest, the theory is applicable across a wide range of cultures. The belief contents and the weights accorded to these may be different, but the beliefs still inform attitude

toward behaviour, perceived subjective norms and perceived behavioural controls (Fishbein and Ajzen 2010). Therefore the constructs change in relation to the beliefs of a given cultural group.

The TPB is an appropriate addition to the theoretical framework. It retains the flexibility to allow the identification of beliefs particular to the case study, while providing a structured approach towards understanding behaviour. The next sections describe the theoretical aspects of the TPB in detail.

#### 4.2.1 Beliefs

The salient beliefs used in the TPB are subdivided in terms of behavioural, normative and control beliefs (Fishbein and Ajzen 2010). In turn, these beliefs are associated with the three constructs preceding intention (see Figure 4.3).



**Figure 4.3: TPB and beliefs (Ajzen 2006)**

Behavioural beliefs are beliefs which individuals hold about the potential positive or negative outcome of a given behaviour, on the basis of which they determine their attitude towards the behaviour (Fishbein and Ajzen 2010). Normative beliefs are linked to the perceived subjective norm and are beliefs about how other people, who are important to a person, would react to that person performing the behaviour (Fishbein and Ajzen 2010). The control beliefs are beliefs about capacity and autonomy; that is, if the person believes that they have the personal capability to perform the behaviour (capacity) and if there are environmental factors that prevent or facilitate

the performance of that behaviour (autonomy) (Fishbein and Ajzen 2010). The control beliefs inform the perceived and actual behavioural control constructs.

In the analysis of the case study data the aim is to identify the salient beliefs in an individual's evaluation of transaction-securing strategies. Once the range of salient beliefs is identified, they are categorised according to the attitude towards behaviour, perceived subjective norm and perceived and actual behavioural control constructs. However, before discussing the constructs, behaviour needs to be explained.

#### ***4.2.2 Behaviour***

Behaviour is the fulcrum in the TPB. According to the TPB, the behaviour needs to be precisely defined to guide the selection of constructs at the appropriate scale and generalisation (Fishbein and Ajzen 2010). If the behaviour is defined too generally or too narrowly, the findings will have little theoretical significance (Fishbein and Ajzen 2010). Four elements are used to define behaviour: action, target, context and time (Fishbein and Ajzen 2010). A change in one of the elements changes the behavioural definition.

Parsing the research question, “Why do buyers of state-subsidised houses use or not use the registration system to secure transactions?” according to the four elements, yields the following result. There are two actions, to use or not to use the registration system (the transaction-securing strategies); a target, to secure a transaction; and a context, a state-subsidised housing estate. The time element is vague, but may be inferred as “when buying a house”. This shows that defining the behaviour according to the research question is problematic.

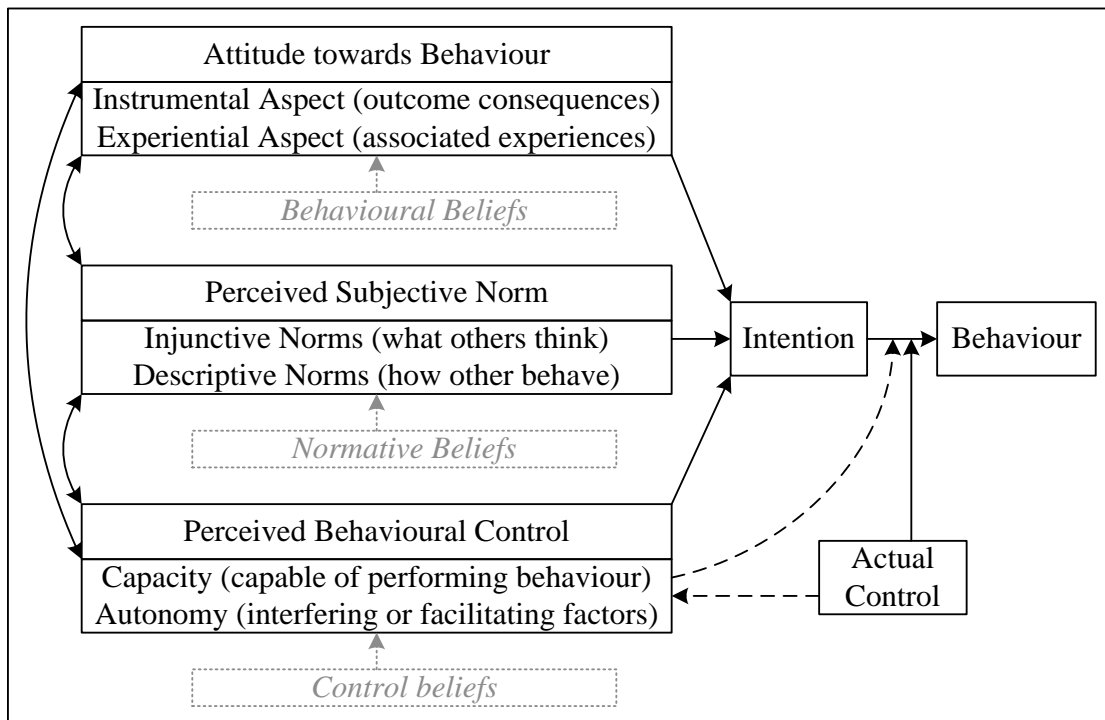
This conflict is resolved by redefining the behaviour throughout the analysis to ensure conformity with Fishbein and Ajzen's (2010) guidelines. However, the intrinsic target of transaction-securing behaviour is “securing a transaction”. Also, the context is scoped to a case study and described by the loci of power and regulatory structures. Therefore these two elements, target and context, are not used in the definition of behaviours for this study (refer to section 7.2).



### 4.2.3 Intention

Fishbein and Ajzen (2010, p. 40) define intention as “the subjective probability of performing a behaviour”. Intention is the link between the behaviour and the attitude towards behaviour, perceived subjective norm and perceived behavioural control constructs (see Figure 4.4).

There are situations where a person may form a positive intention to perform a behaviour, but then not perform the behaviour. Fishbein and Ajzen (2010) partly ascribe this to hypothetical bias. Hypothetical bias occurs in interview data because “people may express an intention to engage in a given behaviour, but when they enter the real situation, their perceptions may change, producing a different intention” (Fishbein and Ajzen 2010, p.63). In this research the hypothetical bias is not present in cases where the participant did use a transaction-securing strategy. However when participants are asked about future behaviour it is important to be aware of hypothetical bias.



**Figure 4.4: The Theory of Planned Behaviour: Expanded (adapted from Ajzen 2006)**

#### ***4.2.4 Attitude towards behaviour***

According to the TPB (Fishbein and Ajzen 2010) the attitude towards a behaviour construct is composed of two related aspects: the behaviour's perceived instrumental aspect, i.e., whether the behaviour will have negative or positive consequences, and the behaviour's perceived experiential aspect, i.e. whether the performance of the behaviour will have positive or negative associated experiences (see Figure 4.4). The beliefs that inform attitude are formed directly from observation, indirectly from information obtained from others and by inference (beliefs inferred from other beliefs about the behaviour).

#### ***4.2.5 Perceived subjective norms***

A person forms the beliefs associated with the perceived subjective norm by evaluating the perceived pressure exerted by a group or society to perform or not to perform a given behaviour (Fishbein and Ajzen 2010). There are two normative beliefs according to the TPB (see Figure 4.4). Injunctive norms are related to a person's perception of what others think is an acceptable behaviour, thus providing a person the motivation to comply with this norm. Descriptive norms are linked to the beliefs about how others behave.

#### ***4.2.6 Perceived and actual behavioural controls***

Perceived behavioural control is "people's perception of the degree to which they are capable of, or have control over, performing a given behaviour" (Fishbein and Ajzen 2010, p. 64). The perceived behavioural control has two aspects: capacity and autonomy (see Figure 4.4). A person is capable of performing a behaviour if he or she has the necessary information, skills, opportunities and other resources. The control over the behaviour or the person's autonomy is affected by the barriers and obstacles that the person may need to overcome. These include the steps necessary to perform the behaviour and the actions required by other people, as well as rules, policies, regulations and laws. Thus the sources of control may be internal or external to a person (Fishbein and Ajzen 2010).

In the TPB, perceived control beliefs serve as proxy for actual control beliefs, because of the difficulty of identifying actual controls (Fishbein and Ajzen 2010). However in this research the actual controls can be identified, since many of the participants already attempted to or performed the behaviour and encountered actual controls.

In this research, actual controls are identified in two ways. A factor is an actual control if

- the perceived control belief is supported by subsequent experience or events. For example, the buyer believes the off-register transaction is secure because the seller is a family member (perceived behavioural control) and in the following years the off-register transaction remains secure because of this reason (actual control).
- the buyer actually encountered or experienced a facilitating or interfering control factor while attempting to perform the behaviour.

In summary, the TPB explains behaviour by identifying the salient beliefs an individual uses to evaluate a behaviour. These salient beliefs can be subdivided into attitudinal, normative and control beliefs, which in turn forms the attitude towards behaviour, perceived subjective norm, perceived and actual behaviour control constructs. These constructs are then to predict the intention of an individual to perform a behaviour. However, in this study the TPB is used to understand and explain transaction-securing behaviour.

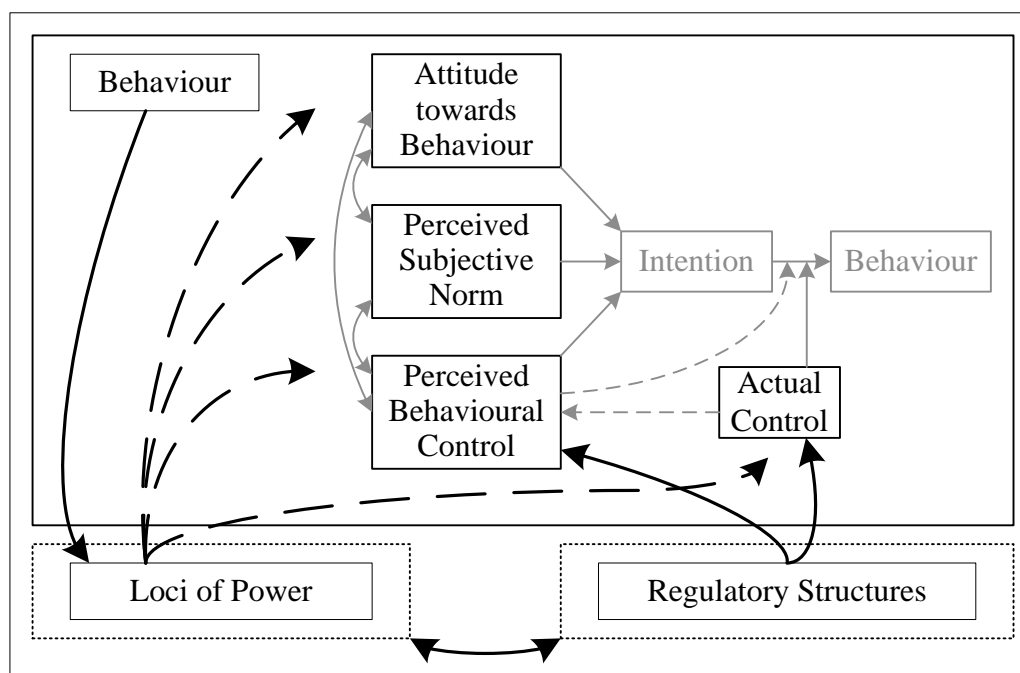
### **4.3 Loci of power and regulatory structures**

This section discusses loci of power and regulatory structures in a transactional environment described by the theoretical framework.

As mentioned in section 4.1, the loci of power are individuals, groups and/or organisations that exert control over land transaction-securing strategies, and this definition is an extension of the one used by Marx and Ruben (2008b). The loci of power may include the state and municipalities, but also community-based organisations, conveyancers (lawyers), mortgage lenders and employers.

Regulatory structures are, as stated in section 4.1: rules, regulations and/or laws that govern the actions of the loci of power and control transaction-securing strategies. The regulatory structures include any structures that require a person to conduct and secure a transaction in a certain way.

The regulatory structures are linked to the loci of power (see Figure 4.5). Actions of the loci of power may be controlled by the regulatory structures; conversely the loci of power may affect the regulatory structure by changing the regulations or the application of the regulations or both.



**Figure 4.5: Interactions within theoretical framework**

Changes in the regulatory structures and loci of power may also be initiated by the behaviour component, thereby establishing connections amongst the three components. In a similar fashion, the individual TPB constructs within the behaviour component are interrelated with the loci of power and regulatory structures. The interactions amongst the behaviour, the loci of power and the regulatory structures also show that the transactional environment described by the theoretical framework is not static, but changes over time.

This concludes the discussion of the theoretical framework. The next sections consider the theoretical framework in relation to the use of reasoned action models in cadastral research and land registration use.

#### **4.4 Reasoned action models in cadastral and land registration usage research**

This section continues the discussion started in section 3.2 about theories that address cadastral and land registration use. Here the theories are described and critiqued in relation to the theoretical framework developed for this research.

##### ***4.4.1 TPB and cadastral research***

Barry's (2005) adaptation of the TPB within a cadastral systems context served as the starting point for the design of the theoretical framework of this research. He used the TPB within the context of an informal settlement upgrade in an attempt to test the potential of the theory to predict land registration use.

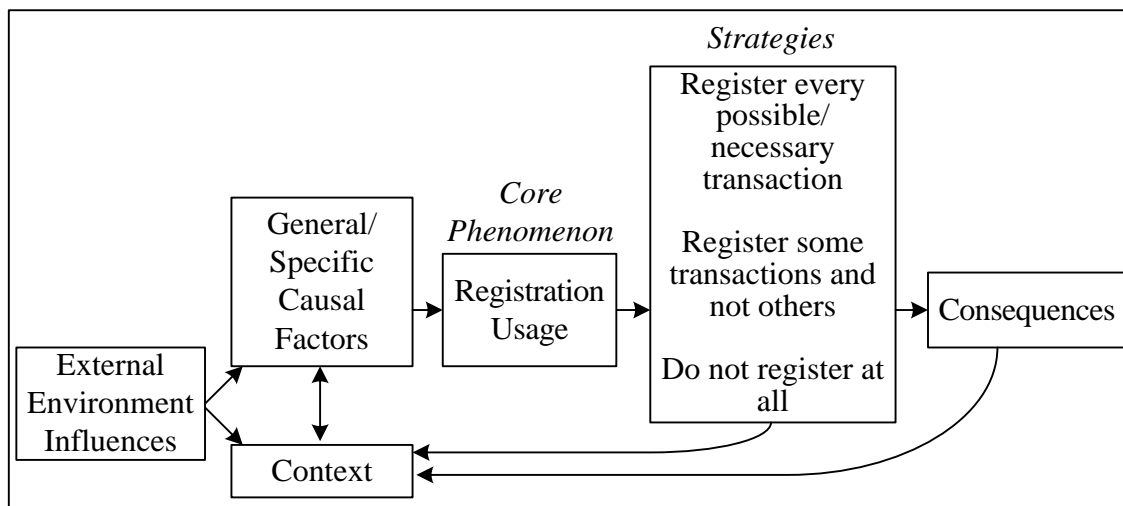
According to Barry's model (a later version (Barry *et al.* 2012) of the model is illustrated in Figure 4.7), land tenure compatibility and usefulness, and perceived ease of use are identified as the two main categories of attitude towards the behaviour. Perceived ease of use is associated with the perceived experiential aspect which represents the positive or negative experiences associated with performing the behaviour. Barry (2005) also argued that land tenure compatibility and usefulness overrides perceived ease of use, on the premise that a person is unlikely to be swayed by ease of use of a land tenure system when it conflicts with the customs and mores they hold.

Perceived subjective norms are decomposed into two referent groups, family and peers, and powerful individuals; while power facilitating conditions and resource facilitating conditions influence perceived behavioural control (Barry 2005). Barry (2005, p. 128) describes power facilitating conditions within an informal settlement upgrading as controls which "may rest on intimidation or violence". Resource facilitating conditions are "financial resources, time required to use the system, and readiness of access to the registration system" (Barry 2005, p. 128).

This interpretation of the TPB serves to indicate potential themes for exploration; however, the theoretical framework of the current research project differs in that it retains the more generalised constructs of the unmodified TPB, to permit the identification of a potentially wider range of beliefs.

#### 4.4.2 The three-stage land registration usage theory

The three-stage land registration usage theory (Barry *et al.* 2012) examines the same research question as this research, but without confining the theory to state-subsidised housing estates. The similarities and differences between three-stage theory and the theoretical framework of this research are discussed below.

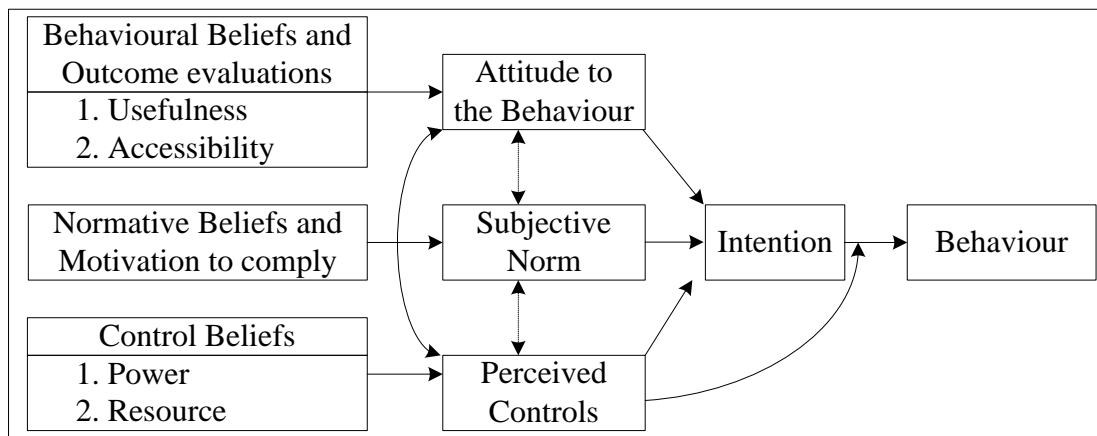


**Figure 4.6: Three-stage theory: Stage one (Barry *et al.* 2012)**

The first stage of the theory uses a social systems approach to examine land registration usage behaviour as the core phenomenon (Barry *et al.* 2012) (see Figure 4.6). According to the theory, causal (general and specific) factors motivate a person to adopt a strategy linked to land registration. There are three strategies that individuals may use to obtain rights in land: to register every transaction; to register some transactions; or to not register transactions. The strategies have consequences which results in a feedback loop that affects the context. In addition the context may be affected by intervening feedback from the intermediate consequences encountered while performing a strategy. There is also an additional feedback loop linked to the

larger external environment. Overall the theory's stage one represents a dynamic system (Barry *et al.* 2012).

The theoretical framework described in sections 4.2 and 4.3 does not use land registration usage as the core phenomenon. Instead transaction-securing behaviour is used, allowing the inclusion of off-register transactions. Also the theoretical framework does not assume that registration use leads to strategies, but considers it as a strategy. However, in stage one of the three-stage theory the context is influenced by the consequences of attempting a strategy. This is similar to the change in the transactional environment resulting from the interaction of the behaviour, loci of power and regulatory structure components.

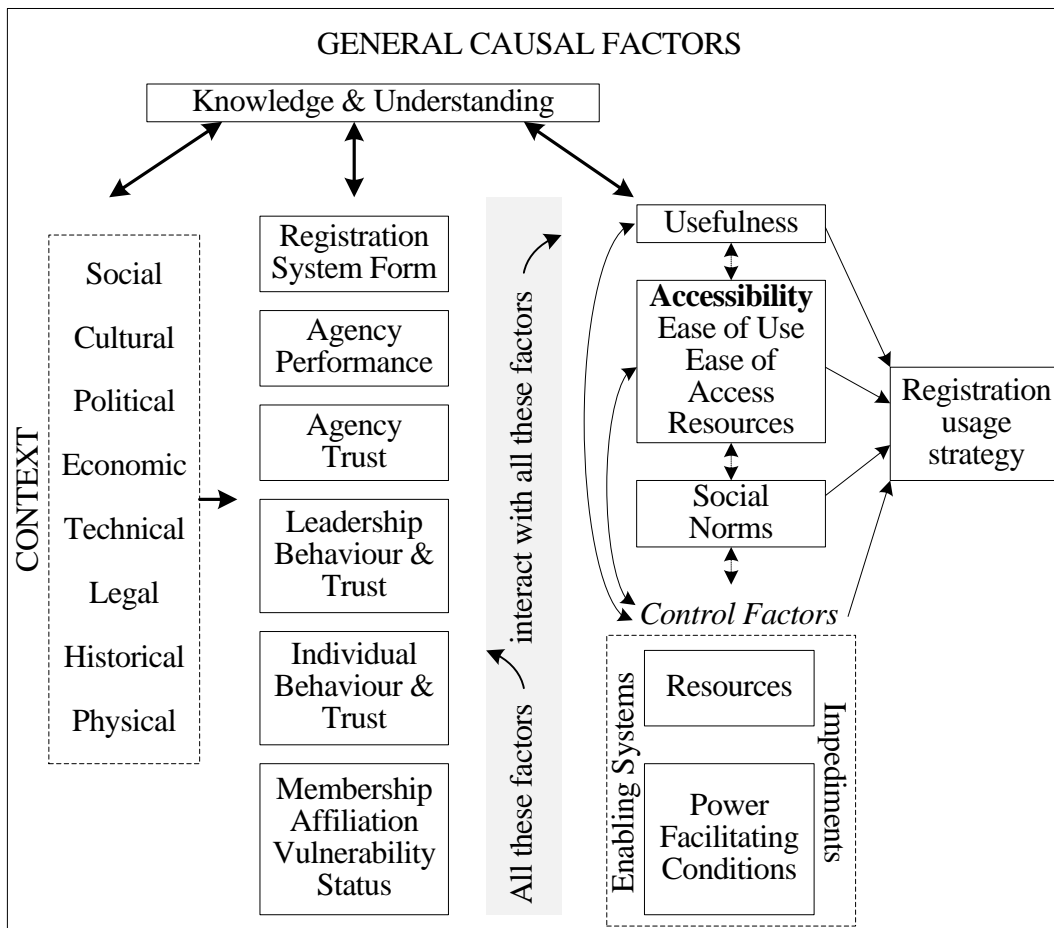


**Figure 4.7: Three-stage theory: Stage Two (Barry et al. 2012)**

The second stage of the three-stage theory is similar to the cadastral usage model described in section 4.4.1 (see Figure 4.7). However, as part of the three-stage theory the behaviours are confined to the three strategies identified in stage one of the theory. As stated in the section 4.4.1 discussion, this use of the TPB may limit the identification of beliefs held by participants.

The third part of the three-stage theory is a causal-process theory which also incorporates elements of TPB (Barry *et al.* 2012). The theory includes many causal factors as illustrated in Figure 4.8 and the behaviour is identified as a registration usage strategy. The TPB associated factors drawn from stage two of the theory, e.g. usefulness, accessibility, social norms and

control factors, raises the same objection in the critique of stage two; that is, that this TPB form is too limiting. Stage three of the theory is general, in that the form of registration system may be any type of land registration system, including private conveyancing. Because the theory does not address a specific context, the context is described as part of the theory. This differs from the approach of this research which is aimed at a specific context, where the context is described as part of the case study.



**Figure 4.8: Three-stage theory: Stage three (Barry *et al.* 2012)**

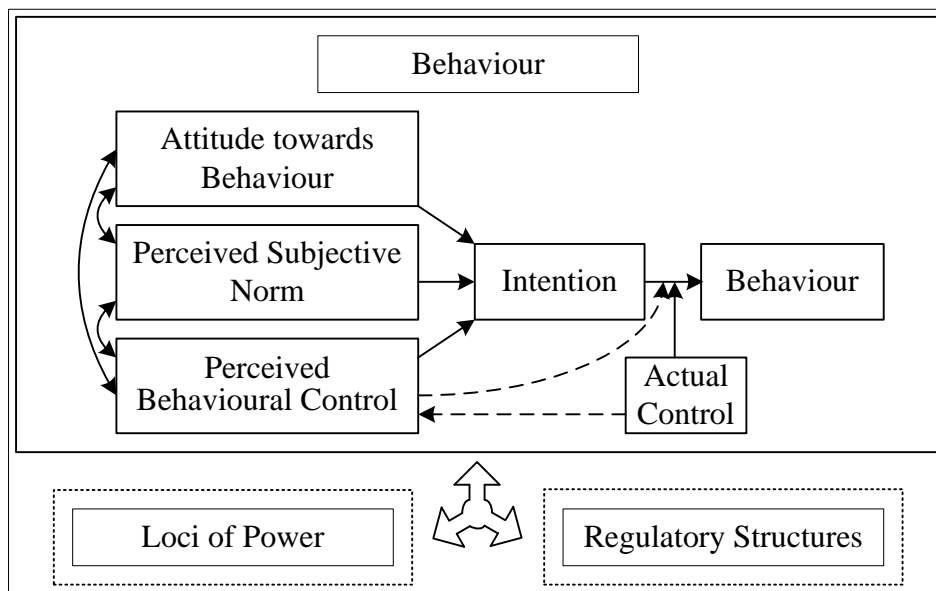
The three-stage theory partly supports the decisions made in developing the theoretical framework in this study, for example, the extensive use of TPB. However, the three-stage theory is more specific in the identification of causal factors and behaviours, and focuses on registration



use, rather than transaction-securing strategies. By comparison the theoretical framework retains flexibility which allows this research to ground the theory in the experiences of participants.

#### 4.5 Summary

In summary, this chapter developed the theoretical framework, which uses the TPB (Fishbein and Ajzen 2010) as a central theory to explain behaviour and also includes loci of power and the regulatory structures components (see Figure 4.9). The theoretical framework is designed to address the research objective, that is, to develop theory explaining land registration usage. The framework ensures a consistent approach to the theoretical development and links the results to existing research.



**Figure 4.9: Theoretical framework including TPB**

The TPB (Fishbein and Ajzen 2010) postulates that salient attitudinal, normative and control beliefs are used by a person to evaluate a behaviour. The beliefs underlie four interrelated constructs: attitude toward behaviour, perceived subjective norm, perceived and actual behavioural control. The constructs are antecedent to the formation of an intention towards a behaviour. If the intention is positive, the behaviour is likely to be performed. However,

perceived behavioural controls and/or actual controls have a direct influence on intention and behaviour, and may prevent a behaviour despite a positive intention.

Attitude towards behaviour is composed of the instrumental and experiential aspects; perceived subjective norm includes injunctive and descriptive norms; and perceived behavioural control combines the person's perceptions about capacity and autonomy.

The theoretical framework also includes the loci of power and regulatory structures. The loci of power are the individuals, groups or organisations that exert control over the transaction-securing behaviour. The regulatory structures are the rules, regulation or laws that govern the actions of the loci of power and control the transaction-securing behaviour.

The behaviour, loci of power and regulatory structures components interact. The loci of power and regulatory structures are also linked to the TPB constructs. The various interactions result in changes in the transactional environment.

The theoretical framework was also discussed in relation to the use of the TPB in cadastral usage studies (Barry 2005) as well as the three-stage land registration usage theory (Barry *et al.* 2012). The theoretical framework builds on Barry's (2005) work, and both theories (Barry 2005, Barry *et al.* 2012) support the use of the TPB. However, it was argued that the theoretical framework is more suitable for this investigation since it retains the flexibility necessary to permit beliefs to emerge from the experiences of participants.

In Chapter 5, it is demonstrated how the theoretical framework described here informed methodological design. The theoretical framework is used to analyse the case study in Chapter 7.

## Chapter Five: **Research Methodology**

### **5.1 Introduction**

The methodology adopted for this study was designed to develop a land registration usage theory which explains why buyers of state-subsidised housing decide to transact within or outside the land registration system. The methodological design also draws on existing research in the field, comparable studies in the cadastral discipline, and the theoretical framework described in Chapter 4.

The investigation used an in-depth qualitative case study to address the research objective. A qualitative approach was used in preference to a quantitative one, because it facilitates the exploration and conceptualisation of a complex phenomenon that cannot be separated from its context (Creswell 2007). The chapter will first argue the suitability of this case study research, and then discuss the case study design and criteria for case selection. Next the research participants, the recruitment strategy and the data collection are described. This is followed by a detailed explanation of the analysis procedure. Finally, validity and reliability procedures as well as ethical concerns are addressed.

### **5.2 Case study method**

#### ***5.2.1 Justification of single case study design***

Case study research is characterised in various ways, such as a research strategy or an object of study (Stake 1998, Flyvbjerg 2006, 2011, Creswell 2007, Yin 2009). Whatever the characterisation, the majority of definitions for case study research include three elements, that is, a bounded system, context and multiple sources of data (Stake 1998, Creswell 2007, Yin 2009, Flyvbjerg 2011). Another element included by Creswell (2007) and Flyvbjerg (2011) is time. For this research, the case study research is defined as a method used to study a bounded system over time within a context using multiple data sources.

Case study method suits this research because it can be used to develop theory through exploring and understanding a phenomenon that cannot be separated from context and is affected by time. In the cadastral discipline, case study method is promoted as a sound and rigorous method to

develop theory (Silva and Stubkjær 2002, Çagdas and Stubkjær 2009, Barry and Roux 2012a). In addition, Silva and Stubkjær (2002, p. 411) argue that cadastral systems, and by inference land registration systems, are “highly determined by social and cultural factors” and local conditions need to be understood to support cadastral development and reform. Since this study aims to develop land registration usage theory within a specific context, case study method is the appropriate choice.

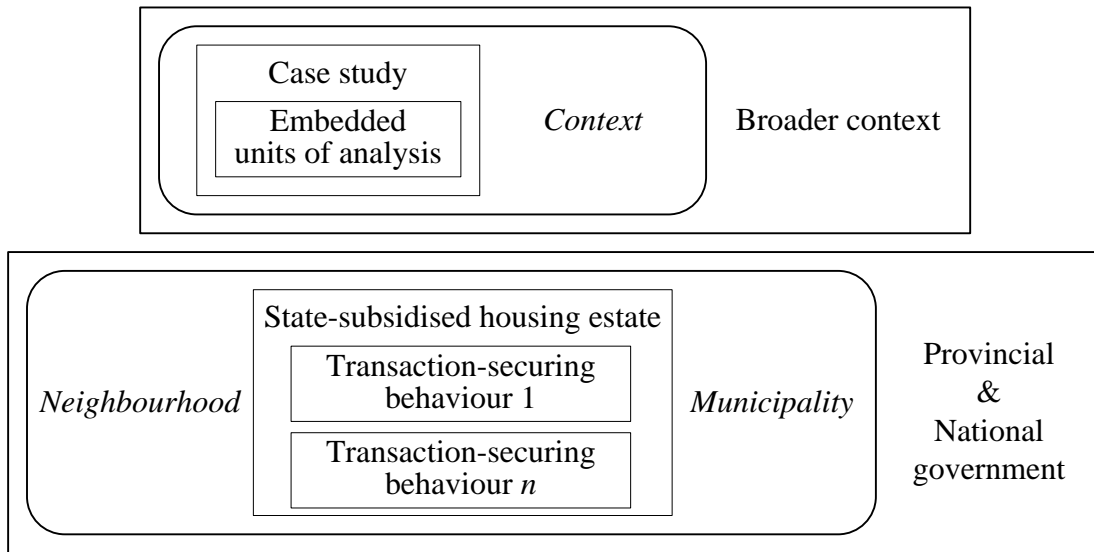
The research design for the broader research project includes six case studies, however it was decided to use a single case - Project 2001 - for this dissertation. This was because it was possible to collect an unusual depth and range of data in Project 2001 compared to the other case studies. Firstly, the Project 2001 buyers were very forthcoming about their experiences compared to the buyers in the other case studies. Secondly, it was possible to collect longitudinal data, since the data about transaction-securing strategies ranged from the completion of the housing project in 2001 until end of the research fieldwork in 2010.

Although multiple cases tend to create more robust theory, a single case study can be used to build theory (Benbasat *et al.* 1987, Yin 2009, Flyvbjerg 2011). In fact, when an unusual opportunity presents itself, many researchers encourage using a single case study (Benbasat *et al.* 1987, Stake 2000, Yin 2009, Flyvbjerg 2011).

### ***5.2.2 Case study design***

The case study design is based on a single case of a state-subsidised housing estate. The context of the case includes the neighbourhood within which the housing estate is located, as well as the municipality which serves the neighbourhood (see Figure 5.1). The broader context is the provincial and national government.

The transaction-securing behaviours were defined as embedded units of analysis within the case. Yin (2009) describes embedded units of analysis as subunits within a single case. In this research, transaction-securing behaviours are regarded as subunits within the state-subsidised housing estate case.



**Figure 5.1: Case study design**

### 5.2.3 Case selection

The initial selection of the case study areas was according to general criteria, because little information is available about state-subsidised housing estates. In fact, the researcher found that the case studies' characteristics in relation to land tenure only became clear after extensive fieldwork.

As discussed below, the general criteria were that the case study must be a housing estate:

- 1) developed with funds from the state project-linked subsidy (refer to section 2.3);
- 2) located in a Western Cape municipality;
- 3) outside of the metropolitan areas; and
- 4) must be accessible to the researcher.

It was decided to limit the research to housing funded by the project-linked subsidy because a requirement of the subsidy is the registration of ownership. In addition, the project-linked subsidy has been available since 1994 and therefore sufficient time has passed for a significant number of land transactions to have occurred.

Furthermore, the case study selection was restricted to one province, the Western Cape Province. The Western Cape Province is historically unique because it had the most restrictive apartheid laws and regulations with regards to migration from the former Bantustans (Makiwane and Chimere-Dan 2010). The repeal of these laws resulted in intense migration to urban centres and enormous pressure on government to provide housing.

A non-metropolitan municipality was used for two reasons. Firstly, few land tenure studies have been done in municipalities outside of the metropolitan areas (refer to Chapter 3). Secondly, gaining access to a community in the city can be difficult and at times dangerous. These reasons support the conclusion that a rural municipality is suitable for this study.

Another criterion in case selection was accessibility. Initially it was assumed that there may be problems with accessing the housing estate, but this concern proved unfounded. It was also important to obtain the cooperation of the municipality. This is because the municipality holds the documents regarding the project history and municipal officials can provide valuable information related to the case study.

Six case study areas were selected according to the above criteria. One of the six cases serves as the case study in this dissertation (refer to section 5.2.2). This was Project 2001 in the neighbourhood of Phumla<sup>14</sup> in the Seedorp<sup>14</sup> municipality.

### **5.3 Data collection**

Multiple data sources are used in case study research. Semi-structured interviews were conducted with participants and a variety of documents and secondary data was collected in this project. The bulk of the data was collected during three field visits to South Africa; the first from May to August 2009, the second from June to August 2010 and the third in June 2011.

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<sup>14</sup> Pseudonyms. Refer to section 5.6 Ethics.

### ***5.3.1 Participants***

The research participants speak one or more languages: Xhosa, Afrikaans and/or English. The researcher is fluent in Afrikaans and English, and a facilitator interpreted for Xhosa-speaking participants. This was to ensure that all participants could participate in their preferred language.

Five major categories of participants were interviewed. The first category included the residents in the state-subsidised housing estate. This group was composed of subsidy beneficiaries, property buyers, property heirs and tenants. Local or community leaders fell into the second category. Councillors and community development workers are also referred to as community leaders in the dissertation to protect their anonymity (refer to section 5.5). The third category was municipal officials. All officials attached to the municipal department responsible for housing functions were interviewed. Lawyers or conveyancers who assist in registered transfers of properties in the housing estates fall into the fourth category. The final category included residents from other parts of the neighbourhood, local community historians, bank employees, business owners, and land surveyors.

### ***5.3.2 Recruitment***

The participants were recruited in the following manner. The researcher contacted the municipality and obtained permission to conduct interviews with officials. Through this process, councillors and officials were invited to participate in the research. The municipality was also approached first to gain an understanding of local conditions and municipal practices before conducting interviews with residents. Municipal officials identified local leaders and groups. This identification may be biased in favour of certain groups but it does assist in initial recruitment and gives a perspective on the relations of the municipality with local leaders and groups.

The residents and buyers were recruited by conducting door-to-door surveys using a sample of houses in the state-subsidised estate. The door-to-door approach also publicises the research project by its visibility.

Community leaders were identified through interviews with municipal officials, residents and documentary sources. Attending municipal education seminars for residents as an observer resulted in community leaders approaching the researcher. The identification of the remaining participants was through referrals or interviews with other participants.

The sample size in the case study (refer to section 6.3) was determined by following a combination of Yin (2009) and Lincoln and Guba's (1985) guidelines. Yin (2009) advises that enough data must be collected to provide confirmation of evidence for the main topics and to investigate rival explanations. Whereas Lincoln and Guba (1985, p.350) advises that data collection continues until saturation is reached, which they describe as the point when "data collection produces tiny increments of new information in comparison to the effort expended to get them".

### ***5.3.3 Semi-structured interviews***

All the interviews in the research were semi-structured. A list of general questions was used by the researcher. However, the interviews were guided by the information the participants provided and the questions were only used to prompt discussion.

The housing estate residents were questioned about land transactions (refer to Appendix C for the interview guide). If residents transacted in land (buyers), they were asked to explain the entire process. Buyers, and other residents, were asked about their observations, experiences and opinions of land transactions, as well as their experiences as land owners. Housing histories were also obtained from residents and buyers. In addition, follow up interviews were conducted with a selection of the participants.

Similar questions were asked of local leaders, although the focus was more on their leadership role. The topics in the interviews with local leaders varied widely depending on the participant and his or her leadership role.



Municipal officials were interviewed about their experiences with land transactions and housing in the municipal area. Particular information was also obtained about state-subsidised housing projects and administrative matters, for example the status of the title deeds or the processes followed by the municipality.

Lawyers primarily provided information about registered transactions and the practices they follow. They also discussed clients who conducted off-register transactions and subsequently attempted registration. However, in these interviews the clients were not identified due to the ethical guidelines of the research as well as privacy and attorney-client confidentiality responsibilities.

Interviews with other participants were structured according to the reasons for approaching them. For example, questions about the history of an area were asked if the participant is a community historian.

#### ***5.3.4 Documents and secondary sources***

Historical, government, municipal, land transaction and demographic data was collected from multiple sources, including newspapers, municipal documents, council minutes, transfer records and government websites.

The town has a local newspaper that proved a valuable source of historical data. The newspaper was useful even when taking in to account the bias in reports. This bias was especially noticeable during the apartheid years and ranged from ignoring events to adopting a perspective favouring one point of view. An internet search of provincial and national newspapers supplemented local newspapers reports.

Council minutes spanning the years of the case study housing development up until 2009 were collected. The focus was on matters linked to social housing, such as the housing projects, debt collection and so forth. Policy documents, valuation rolls, and annual reports were downloaded from the municipal website.

Official transfer records contain information about registered sales in an area, in particular the sale and transfer dates, the transaction parties and the price. These transfer records were obtained from three sources. Two companies, Lightstone and SAPTG, provide data collected from the official government deeds registry. Transfer data of the entire housing estate were acquired from these companies. The Deeds Registry office was the third source of transfer records and title deeds. However, only a limited number of documents were bought from the Deeds Registry because of the expense.

Documentary evidence about the history of the neighbourhood from the perspective of residents before 1994 is not extensive and difficult to obtain. A variety of diverse sources provided fragments of information about this period. These documents include articles from an anti-apartheid newspaper called Grassroots<sup>15</sup>; records from the Truth and Reconciliation Commission<sup>16</sup>; archived reports of the Black Sash human rights NGO<sup>17</sup>; and ANC reports<sup>18</sup>.

Statistical data from Statistics South Africa drawn from Census 2001 and the 2007 Community Survey (Statistics South Africa 2001, 2007) give an indication of the demographics of the areas.

Laws and policies related to the housing programmes and land registration in South Africa were obtained from government websites. These documents provided background to the practical aspects that informed state-subsidised housing development as well as municipal actions in relation to land transactions and other ownership matters.

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<sup>15</sup> Grassroots, 1981. Available from: <http://disa.nu.ac.za> [Accessed 20 January 2013]

<sup>16</sup> Truth and Reconciliation Commission, 2002. TRC Final Report Volume 7: Victim Findings. Available from: <http://www.justice.gov.za/trc/report/index.htm> [Accessed 20 January 2013]

<sup>17</sup> Black Sash, 1985. Report. Available from: <http://disa.nu.ac.za> [Accessed 20 January 2013]; Black Sash, 1991. Report. Available from: <http://disa.nu.ac.za> [Accessed 20 January 2013]

<sup>18</sup> African National Congress, 1991. Western Cape Region: The Secretary's Report. Available from: <http://disa.nu.ac.za> [Accessed 20 January 2013]

## **5.4 Analysis and theory development**

The data analysis methods were primarily qualitative. First, the data from interviews and documents were processed. Second, chronologies and narratives were created describing the housing project and neighbourhood history. Third, the various laws, policies and regulations at local, provincial and national level that affect land transactions were identified. These were linked to the interviews. Fourth, the documents and interviews were used to identify the loci of power involved in land transactions. Fifth, the transaction-securing processes, extracted from the interviews, were analysed using coding and constant comparison to identify concepts (Charmaz 2006). Sixth, the emerging concepts were associated with the theoretical framework. In this way the three components of the theoretical framework were expanded. An additional cycle of analysis was added during the analysis to address sequences of transaction-securing strategies.

### ***5.4.1 Data processing***

The data processing served two purposes: to ensure that the data are easy to access and search and to further verify the data.

All information relating to the case study housing estate and the neighbourhood history were extracted from newspapers, council and municipal documents, and other documents. This information was arranged chronologically to assist in developing the history of the neighbourhood and the project.

The municipal documents were used to develop a chronology of policy and municipal procedural changes. These were supplemented by interviews with municipal officials and residents. Laws and policies relating to land transactions and housing at provincial and national level were also accessed.

The recorded interviews and field notes were transcribed, indexed and filed. The transaction-securing processes discussed in the interviews were also extracted. The demographic data and housing histories of the participants were tabulated and summarised.

The interview data was then verified using other interviews and documentary evidence. This verification process supplemented the initial triangulation in the field. Each transaction-securing strategy was considered separately and within the case study context to determine if the participant's narration made sense. The transfer records, histories, other interviews and documents assisted in this process. For example, the transfer records were compared to interview data. The land record data provides dates, names and prices. These markers can be identified in the interviews and assist in triangulation (refer to section 5.5).

The transfer record data was also used to expand on the interview data, for example the participants would know little or nothing about the original granting information, but this information is in the land records.

#### ***5.4.2 Analysis***

The analysis scheme is illustrated in Figure 5.2. The scheme consists of three major parts and one minor. The three major parts analyse the loci of power, regulatory structures and behaviour. The minor part addresses transaction-securing sequences. The illustration of the scheme excludes the analysis of the context.

The context was analysed using the chronologies of the housing project and the neighbourhood; the chronology of policy and municipal procedural changes; laws and policies at provincial and national level; and oral histories. The transfer records, demographic data and personal housing histories were also used to explore the context.

Transfer records for the housing estate were analysed. The registered sales transactions were extracted and arranged chronologically. The number of transactions per year and the changes in prices were noted. The transaction records and the valuation records were also used to determine the number of title deeds that were not transferred to the beneficiaries.

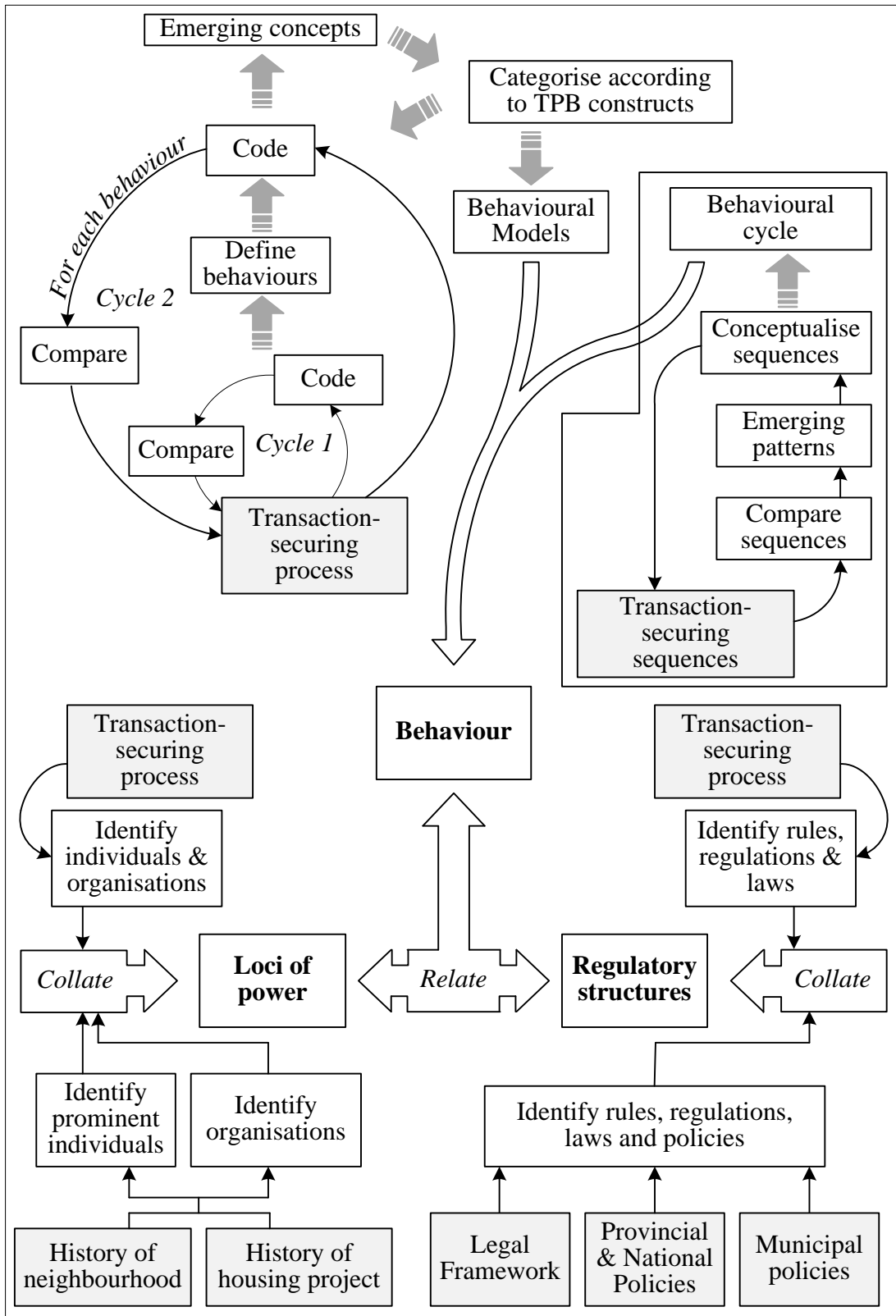


Figure 5.2: Analysis scheme

The demographic data and personal housing histories from each interview provided an indication of the land tenure experiences of the participants, but also an understanding of the social composition in the case study area, for example, participants who have strong place connections and families who have lived in the area for generations, as opposed to recent labour migrants.

An important assumption that guided the analysis and theory development based on the interview data was that the data represented the salient beliefs of the participants (refer to section 4.2). Therefore it is assumed that participants may have a variety of reasons that motivated the use of a transaction-securing strategy, but that they are most likely to mention the most important reasons in the interviews.

The first major part in the analysis scheme in Figure 5.2 concerns the loci of power. To fully explore the loci of power in the neighbourhoods all prominent individuals and organisations mentioned in the documentary evidence were identified. These lists were arranged chronologically according to individual and organisation. The prominent individuals were then cross-referenced to organisation and vice versa. The interview data was then linked to the individuals and organisations to narrow the loci of power to those who were involved in transaction-securing strategies.

The regulatory structures were analysed according to the second major part of the analysis scheme. The laws, rules and policies at different government levels were identified and linked with interview data.

The behaviour is the third major part of the analysis scheme. This part included techniques from grounded theory, i.e. coding and constant comparison. The aim was to analyse the transaction-securing processes, that is, the process a buyer goes through to secure a transaction, which includes one or more transaction-securing strategies.

The first cycle consisted of coding the extracted transaction-securing processes and the interviews. Coding is the process of labelling segments of text. The label “simultaneously

categorizes, summarizes and accounts for each piece of data” (Charmaz 2006, p. 43). These codes were then compared using constant comparison. Constant comparison is a technique that compares data with data, category with category and incident with incident to identify similarities and differences and assists in conceptualisation (Charmaz 2006). The first cycle continued until all the codes were compared and refined.

To fulfil the guidelines of the Theory of Planned Behaviour (TPB), the different behaviours were defined according to action and time (refer to sections 4.2.2 and 7.2). This was done through inspection and by comparing the set of codes associated with a particular transaction-securing strategy. The transaction-securing strategies and their associated codes were then grouped according to behaviour. This initiated the second cycle of coding and constant comparison within the behaviour groups.

Throughout the two cycles there was a return to the transaction-securing processes as well as the interview data. Also in some instances the analysis returned to cycle one, and the process was reiterated. This occurred to ensure that codes are consistent and is part of the reliability procedures (refer to section 5.5). The coding and constant comparison cycles continued until stability was achieved in the emerging concepts.

The emerging concepts were then associated with beliefs. For example, the code “getting information from the municipality” is linked to the belief that the municipality is a source of information. However, most of the codes already described beliefs. The beliefs were then categorised according to the TPB constructs, i.e. attitude towards behaviour, perceived subjective norm, perceived behaviour control and actual behavioural control.

At this stage, another iteration of the coding and constant comparison cycles started. Considering the concepts in relation to the TPB constructs revealed rival explanations as well as other avenues of analysis. The behavioural models were constructed once all the iterations were completed.

The final cycle of analysis accounted for sequences of transaction-securing strategies. In this cycle of analysis, the transaction sequences were created by linking the transaction-securing strategies with the pivotal beliefs. A pivotal belief is the one belief amongst a set that motivates, inspires or forces a buyer to attempt a behaviour. These pivotal beliefs were clearly identified by participants in the interviews. The transaction sequences were then compared to identify parallels and differences. Through this comparison, patterns emerged. These patterns led to conceptualisation. This conceptualisation resulted in an addition to the theoretical framework and is explained in section 7.8.

Finally, the three parts, loci of power, regulatory structures and behaviour were combined. In this way, land registration usage theory was developed within the context of the case study.

## **5.5 Validity and reliability**

The research design incorporates strategies for validation and reliability in line with the suggestions by Creswell (2009).

The validation strategies include triangulation of different data sources of information; checking the interpretation of information with participants; and presenting contradictory evidence as part of the analysis.

The methodology includes data collection from multiple sources which assists in corroborating data by using triangulation. Interviews were conducted with residents, community leaders, municipal officials and others (refer to section 5.3.3). Newspaper articles, municipal documents, transfer records and other documents were also collected (refer to section 5.3.4).

The triangulation of data describing the transaction-securing processes was complex. The transaction-securing processes in the case study could be confirmed at a general level as opposed to individual level, by triangulating data from interviews with residents, community leaders, municipal officials and lawyers. The experiences of individuals were harder to triangulate. Transaction processes that included registration were partly confirmed by using official transfer



records in conjunction with interviews. Transaction processes with off-register transactions were validated by some participants showing documentary evidence of the off-register transactions. Other off-register transactions were confirmed from interviews with two different sources, for example one participant would discuss the experiences of another.

The participants mainly speak two languages - Xhosa and English are the main ones – and a small number also spoke Afrikaans. The researcher is fluent in English and Afrikaans, and a facilitator interpreted for Xhosa-speaking participants. The researcher is aware that misinterpretation due to cultural or other differences may distort findings. Thus interviews were conducted reflexively, i.e. with the awareness of the researcher's position (Creswell 2007 and refer to section 1.7). The facilitator, a resident in the state-subsidised housing estate, also assisted in this process. In addition, the majority of Xhosa speakers speak English and/or Afrikaans; often during interviews in Xhosa, participants would correct the facilitator if they did not agree with the interpretation.

Other strategies were used to check for distortions or misinformation. After the first interviews, both the descriptions of registered and off-register transactions were checked to see if the processes made sense, internally and externally in terms of the context and project history. Throughout this process uncertain data were flagged. The data were uncertain because it did not make sense in the transaction process or context, or there was a mismatch in the data from two sources. In most cases the uncertainty surrounding the data was resolved with a follow-up interview, listening to the recorded interview with the facilitator to check interpretation or the addition of information from further analysis. In some cases the mismatch in the data from two sources indicated different perspectives or opinions and did not represent a distortion or misinformation. These contradictory or alternative perspectives are included in the discussion of the results.

The reliability procedures endeavour to ensure the accuracy of the interview transcripts; consistency in the meaning of the codes; and the replicability of the study.

After transcribing the interviews, these were checked to ensure that there were no mistakes. In addition, the information about transaction-securing processes provided by the participants were rearranged in chronological order. These were used in follow up interviews and the participants critiqued the understanding of the information they initially provided.

In section 5.4.2 the analysis procedure is described in detail which assists in replicability. The analysis incorporated a continual return to the data to ensure the consistency of the coding. At each conceptual level the codes were compared to the raw data.

The methodology procedure is discussed in depth in this chapter. The case study selection and data collection procedure are described in section 5.3 and the analysis is documented and illustrated in section 5.4. In addition, the researcher's positioning is clarified in section 1.7. This information increases the extent to which another researcher can replicate the study and results.

## **5.6 Ethics**

Ethical issues have a significant impact on the research<sup>19</sup>. Participants who conducted off-register transactions are in a potentially precarious legal position and participation in the research may expose them to this risk. Furthermore, the majority of state-subsidised housing estate residents are from disadvantaged and marginalized groups. Therefore, buyers may feel vulnerable because of their economic situation.

Community leaders may also feel that the research may harm their relationship with the municipality as well as with their supporters, whereas municipal officials may be hesitant because their practices are under scrutiny. The case study area and municipality are small and it would be easy to identify individuals, therefore it was decided not to name the town or individuals in publications and other forums to avoid causing harm.

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<sup>19</sup> This research project was approved by the Conjoint Faculties Research Ethics Board of the University of Calgary (File no 5878).

When participants were invited to participate, informed consent forms and scripts were used. These are available in Appendices A and B. At the end of the interviews, participants were given the researcher's contact information. Participants could thus contact the researcher in case of any problems due to the interview.

Reciprocity is another ethical issue. Access to data and introductions to other participants are the main benefits for the researcher. To reciprocate, small gestures were used, for example taking a photo and giving the household a copy as a gift on subsequent visits. The researcher also has expert knowledge which was shared with participants, but was careful to ensure that the information or advice given did not affect the research by overly influencing the data collected. This problem of non-disclosure was circumvented by follow up visits or communication after the data had been collected.

The final product in the form of the dissertation and journal articles benefit the researcher. Even though the research participants may not benefit directly, individuals in similar circumstances may benefit, as a better understanding of the participants' perspective may result in changes in the design and planning of state-subsidised housing projects. Publications may also result in changes to the practices of local, provincial and national government, which may be more accommodating to the needs of state-subsidised housing project residents.

## **5.7 Summary**

This chapter described the research methodology, which was designed in relation to the research problem, existing research in comparable fields and the theoretical framework.

The research approach is qualitative and uses case study method. Case study method is appropriate in investigation the research problem, because it facilitates the exploration of a phenomenon that can not be separated from context and time. This type of exploration is necessary to fill the knowledge gap in land registration usage; particularly within the context of state-subsidised housing estates.

The chapter described the criteria for selecting the case study, the participants and their recruitment, and the data collection techniques. The validity and reliability procedures as well as the limitations imposed by ethical considerations were also discussed.

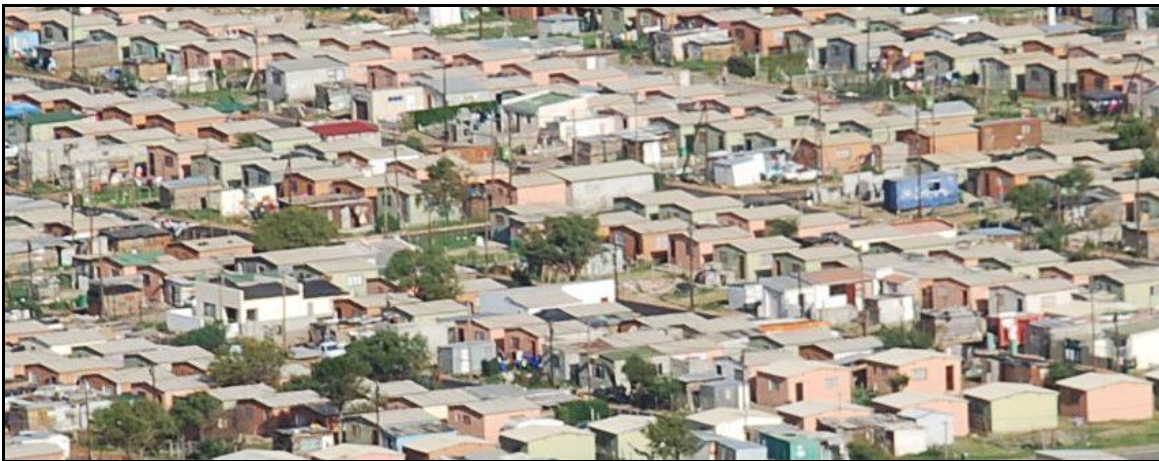
Finally, the analysis process was described. The analysis process is composed of three major parts and one minor in addition to the analysis of the context. The three major parts address the loci of power, regulatory structures and the behaviour; the three primary components of the theoretical framework. The result of the analysis is the development of theory for the case study.

Chapters 6, 7 and 8 present the case study.

## Chapter Six: Project 2001: Context and Description of Transactions

### 6.1 Introduction

The first objective of this chapter is to describe the context in which the transaction-securing strategies in Project 2001 occur. The second objective is to describe the land transaction-securing strategies themselves. The specific beliefs that influenced the buyers' evaluation of transaction-securing strategies are discussed and analysed in Chapter 7.



**Figure 6.1: Houses in Project 2001 (Photo credit: L. Roux)**

Project 2001 is located in the Seedorp<sup>20</sup> municipal area. The Seedorp municipality administers four towns and a number of smaller settlements and has approximately 70,000 residents (Statistics South Africa 2007). Project 2001 is located in Phumla<sup>20</sup>, a neighbourhood in Seedorp, the largest town in the municipal area.

The chapter first discusses housing, population and the effect of migration on Phumla. This discussion provides background and establishes the context in which Project 2001 was developed. Secondly, the chapter describes the research participants. Thirdly, Project 2001's history and land records are discussed, providing the background for the discussion and analysis of transaction-securing strategies in Chapter 7.

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<sup>20</sup> Pseudonym. Refer to section 5.6 Ethics.

Fourthly, the chapter discusses the off-register and registered transactions used by buyers in Project 2001. Matters related to transaction-securing processes, such as, plans to manage the payment of the purchase price and transaction costs, as well as the adaptations made by lawyers to the registration process are described.

Fifthly, the nature of the interactions between the municipality and off-register buyers is discussed. For instance, municipal officials identify off-register transactions by outstanding municipal accounts.

## **6.2 Phumla<sup>21</sup>**

Phumla is a neighbourhood close to the central business district of Seedorp. The neighbourhood is densely populated; Phumla covers an area of approximately one square kilometre and the municipality estimates that there are a total of 30,000<sup>22</sup> residents living in the neighbourhood (Seedorp newspaper 06/04/2007).

There is a mix of formal and informal housing in the neighbourhood. In the formal areas, houses range from single-storey one-bedroom houses to double-storey multiple-bedroom houses. There are seven informal settlements within Phumla, which are closely regulated by the municipality. Whereas unauthorised structures in the informal settlements are regularly demolished by the municipality, most of the formal housing parcels have at least one informal structure on the property. These structures are currently tolerated by the municipality because they are on private property, even though they are in conflict with building regulations. The structures, commonly called backyard shacks, are typically used to accommodate family members or tenants.

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<sup>21</sup> Pseudonym. Refer to section 5.6 Ethics.

<sup>22</sup> All demographic data from the census and municipality is approximate. The census data from 2001 is outdated considering the population changes described in section 6.2.1 and the municipality has not conducted a complete demographic survey of Phumla. In addition, the 2007 Community Survey by Statistics South Africa provides only projected data based on the 2001 census, whereas the 2011 census data for Phumla is not yet available. (Statistics South Africa 2001, 2007, 2011)



**Figure 6.2: Double-storey house next to original Project 2001 house (green) with two backyard shacks on property (Photo credit: L. Roux)**

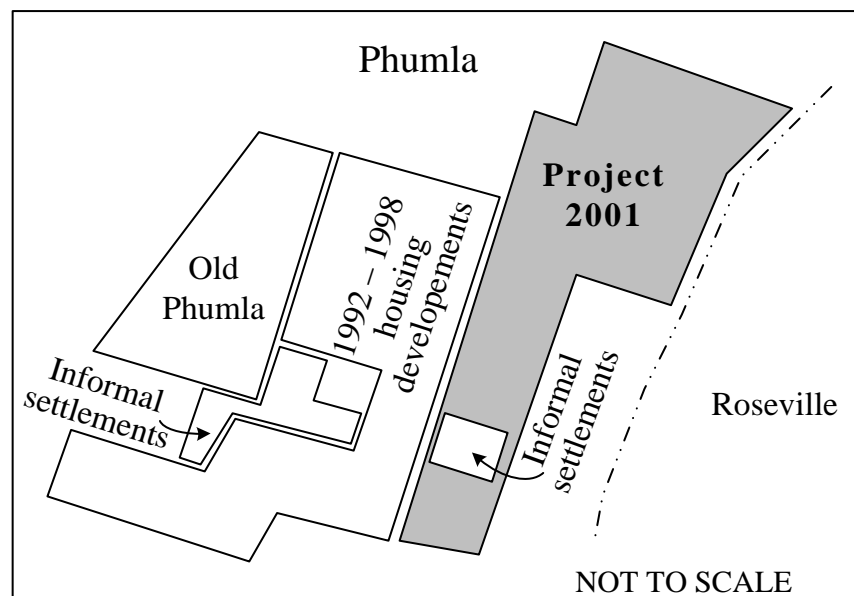


**Figure 6.3: Backyard shacks behind houses in Project 2001 (Photo credit: L. Roux)**

The residents in Phumla are mostly Xhosa speakers, but there are also Sotho, Zulu, Tswana and Pedi-speaking people as well as Somalis, Rwandans, Tanzanians, Nigerians and Zimbabweans making their homes there. This is a reflection of the history of the neighbourhood and migration patterns driven largely by the availability of employment opportunities, as discussed in sections 6.2.1 and 6.2.2.

### 6.2.1 Housing and population

Phumla was formally established as a black residential area in the 1960s in terms of the Group Areas Act 41 of 1950 (Survey records 1966; Seedorp newspaper 12/10/1963, 29/02/1964, 10/09/1999) (see Figure 6.5). In 1965, as part of the Group Areas Act 41 of 1950, the black residents in Seedorp and surrounding areas were forcibly moved to Phumla or forced to go to the Transkei (refer to section 6.2.2; see Figure 6.8) (009<sup>23</sup>, 014, 017, 045). Before the forced removals the municipality built family houses and hostels for single men to accommodate approximately 790 residents in the area colloquially referred to as Old Phumla (Seedorp newspaper 29/02/1964; see Figure 6.4).



**Figure 6.4: A conceptual map of Phumla (pseudonym – refer to section 5.6 Ethics)**

<sup>23</sup> Data provided by a participant is indicated with an interview number.



Year	Events	Population	Number of Houses
1960	Phumla established Forced removals to Phumla	790	42 houses & 40 hostels
1966	Unreliable or no data		
1985		1,500	109 houses & ? hostels
1986	Removal of apartheid movement restriction laws	1,411	
1988	99-year leaseholds in Phumla	2,330	
1990			100 informal structures
1991	99-year leaseholds converted to ownership		
1992		4,793	151 houses & 34 hostels 900 informal structures
1994	<i>National elections</i> 117 rental houses built		268 houses & ? hostels >1,400 informal structures
1995	<i>Local elections</i>		
1997	233 state-subsidised houses built		728 houses & ? hostels
1998	460 houses built on IDT lots		961 houses & ? hostels
1999	90 rental houses built		1,051 houses & ? hostels
2001	1,300 state-subsidised houses built (Project 2001)		2,351 houses & ? hostels
2003		15,000	
2007		30,000	
⋮			

**Figure 6.5: Phumla timeline (Extracted from newspapers, municipal council minutes and life histories)**

In interviews, residents reported that the hostels and family houses did not provide adequate accommodation. For example, participants 045a and 045b moved into one-bedroom houses and they had seven and eight family members, respectively. Six years later, in 1971, the Seedorp newspaper (11/03/1971) reported that 33 of the 44 family houses were overcrowded and 22 of the houses had backyard shacks accommodating family members. By 1987 the municipality estimated that there was a shortfall of 84 houses (Seedorp newspaper 03/04/1987). In 1992, a consultant working for the municipality reported a backlog of 1,150 houses (Municipal council minutes 18/11/1992). This increase was due to population changes, as explained below.

Until 1988, Phumla residents could only rent houses in the neighbourhood. This changed with the introduction of 99-year leaseholds. The Black Communities Development Act 4 of 1984 made it possible for black people to obtain 99-year leaseholds and regulations to the act, added in 1986, permitted the registration of these rights in the Deeds Registry (Emdon 1993). The municipality sold at least 23 houses to Phumla tenants by April 1988 on long-term leases (Seedorp newspaper 17/07/1987, 15/04/1988; Municipal council minutes 16/06/1986).

These changes in legislation are linked to national political shifts driving the dismantling of apartheid and leading to the nation's first fully democratic general election in 1994. In addition, the physical environment of Phumla changed dramatically from 1990 to 1993. Informal settlement started in 1990 and by the end of that year 100 families were living in temporary structures (Seedorp newspaper 29/11/1990; 014).

In response to the political change and the increase in the rate of informal settlement, a variety of housing projects was developed in Phumla in the 1990s by the municipality (Seedorp newspaper 10/09/1996). The projects were subsidised by the state and the Independent Development Trust (IDT), a quasi non-governmental agency. Except for a municipal rental housing project, all the projects transferred registered ownership to beneficiaries. Furthermore, existing rental and self-help houses in Phumla were sold using the Discount Benefit Scheme (refer to glossary) and houses held by 99-year leasehold were converted to ownership in terms of the Upgrading of Land Tenure Rights Act 112 of 1991 (Municipal council minutes 23/06/1998; 26/06/2001). The

transfer of rental houses was still occurring at the time of fieldwork in 2009/2010 (005; Transfer records 2010).

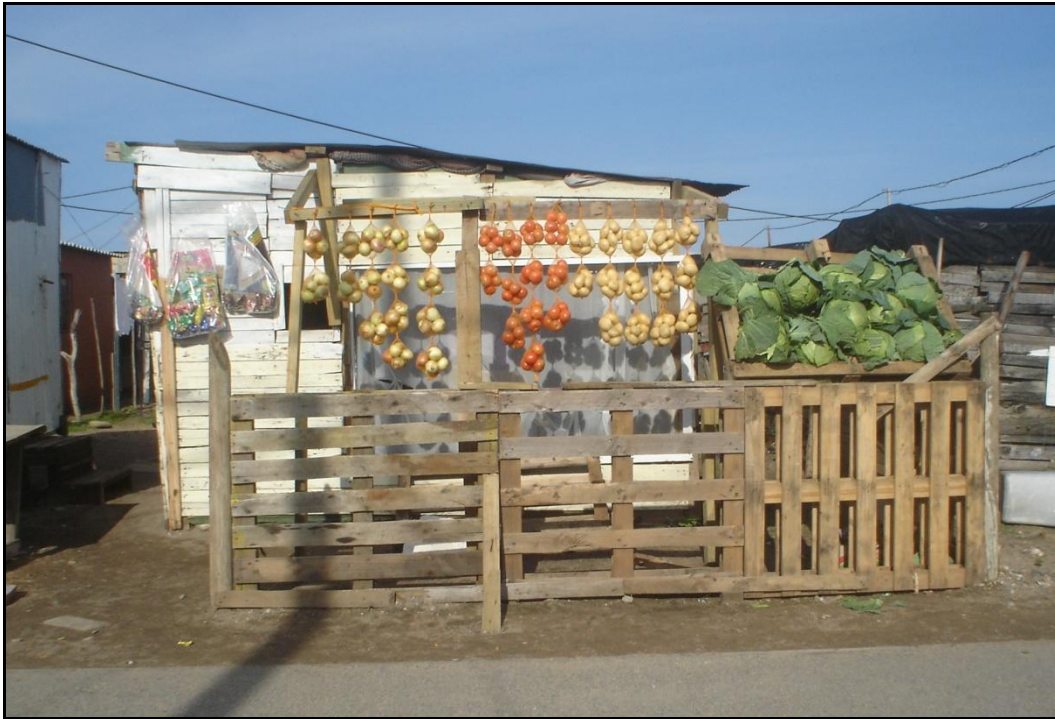
The case study central to this dissertation, Project 2001, is one such state-subsidised project in Phumla. As part of the project, houses were constructed on fully serviced sites and the project was completed in 2001. The planning for the next housing project after Project 2001 only started in 2010.

Post-Project 2001, Phumla's population increased from approximately 15,000 in 2003 to 30,000 in 2007 (Seedorp newspaper 17/01/2003, 06/04/2007). Many new residents found accommodation in informal settlements; the municipality estimated in 2009 that there were 1,159 informal structures in Phumla (Municipal annual report 2009/2010).

Another major source of accommodation is backyard shacks or Wendy houses on the properties of formal houses (see Figures 6.3 and 6.6). Field observation showed that very few houses do not have backyard shacks or Wendy houses and, in many cases, have more than one structure on the property for purposes of accommodation. The backyard shacks and Wendy houses are common for two main reasons. Firstly, they were built in response to the lack of housing described above. Secondly, according to a municipal official (003) the municipality exercises strict control over the informal settlements on municipal land and limits the size of the settlements, but does not intervene with structures on private property. This was confirmed by a land surveyor who works in the area (027). All of the structures in the informal settlements are numbered and a company subcontracted by the municipality surveys the settlements every week and breaks down any new structures (003; Municipal council minutes 03/04/2001). However, a consequence of this control is the backyard shacks throughout the formal housing section of Phumla.



**Figure 6.6: Wendy houses in front of a house in Project 2001 (Photo credit: L. Roux)**

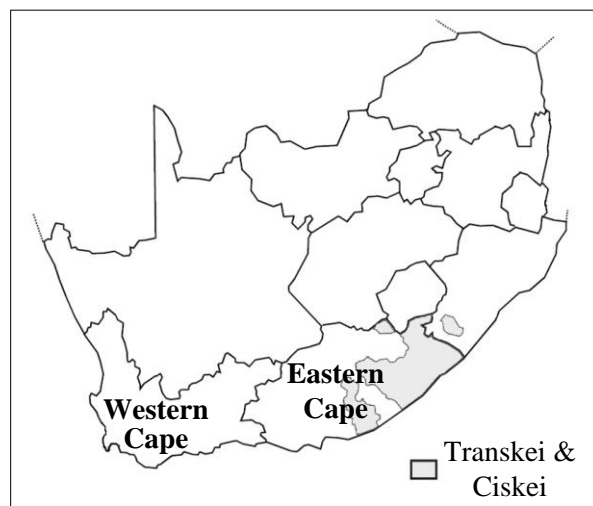


**Figure 6.7: Vegetable and candy display in front of a backyard shack used as a shop in Project 2001 (Photo credit: L. Roux)**

This discussion shows that there is currently a significant shortfall of housing in Phumla. This pressure is the result of a number of factors. Firstly, there has always been a lack of housing in Phumla. Secondly, between 1992 and 2007 the population in Phumla increased by approximately 25,000 residents (500%). Thirdly, the housing stock increased by only 2,200 houses over the same period. Fourthly, the informal settlements are strictly controlled by the municipality, which limits accommodation in the settlements. These factors in combination result in pressure on housing in Phumla and in turn, affect transaction-securing strategies by increasing the power of the sellers and also motivate reclaims of houses by off-register sellers, which will be discussed in section 8.2.

### **6.2.2 Migration**

The majority of migrants to Phumla arrive from the Eastern Cape province in search of employment (001, 006, 009, 014). Migration also occurs from cities and towns in the Western Cape province and other African countries. Currently there is no data available that can be used to quantify the numbers of migrants in Phumla and the details specific to Phumla are based on observation and anecdotal evidence from municipal officials, community leaders and Phumla residents.



**Figure 6.8: Transkei and Ciskei areas in the Eastern Cape province**

Migration between the south-eastern (Eastern Cape province – see Figure 6.8) and the south-western regions (Western Cape province) of South Africa is an old phenomenon (Makiwane and

Chimere-Dan 2010). During the apartheid era, two areas within the south-eastern region were designated as homelands; i.e. the independent states of the Transkei and the Ciskei. Homelands (or Bantustans) were legislated through the Bantu Authorities Act 68 of 1951. The legislation gave the government the power to force black people to move to the homelands.

The Transkei and Ciskei now form part of Eastern Cape province which, compared to other South African provinces, is experiencing high rates of unemployment and social problems, along with a lack of basic services (Makiwane and Chimere-Dan 2010). The end result is high rates of migration of young adults out of the south-east region into the Western Cape (Makiwane and Chimere-Dan 2010). Census 2011 shows that the total population in the Western Cape is 5.8 million. This figure includes 0.9 million people who were born in the Eastern Cape, of whom approximately 170,000 moved to the Western Cape between 2001 and 2011 (Statistics South Africa 2011).

The migration patterns discussed above are observable in Phumla. The housing histories showed that 31 of the 43 research participants who bought houses migrated from the Eastern Cape. One group migrated to the Western Cape and settled permanently (016, 020, 021, 026, 072, 073, 076). The second group consists of migrants who temporarily settle in the Western Cape for work and then return to the Eastern Cape (022, 034, 039, 064). Individuals in this group may also return to Phumla at a later stage (022, 054b).

The migration patterns are linked to the sale of houses. According to buyers, sixteen of the sellers decided to sell their houses because they wanted to return to the Eastern Cape. This pattern was also confirmed by community leaders (009, 017, 051, 074), lawyers (050, 075, 151, 152) and municipal officials (001, 015). Five additional sellers migrated to other cities in South Africa. Therefore 21 of the 34 sales discussed with buyers occurred because the seller was moving to the Eastern Cape or another city.

Migration influenced transaction-securing strategies in a number of ways. This will be discussed as part of section 8.2. The next section describes the research participants.

### 6.3 Participants

Ninety-one interviews were conducted during the fieldwork as part of the case study. Table 6.1 is a summary of the participant categories and number of interviews. Additional demographic data is shown in appendix D.

<b>Category</b>	<b>Number of interviews</b>
Buyer households – 1 <sup>st</sup> interview	34 (44 participants)
Buyer households – 2 <sup>nd</sup> interview	23
Project beneficiaries	4
Tenants	4
Community leaders	10
Municipal officials	4
Lawyers	7
Other (Business owners, bank officials, land professionals, Phumla residents)	5
<b>Total</b>	<b>91</b>

**Table 6.1: Participant categories and number of interviews**

Representatives of all community leader groups - councillors, leaders associated with civic organisations, members of prominent families and executives of the community court (refer to section 6.5.4) – were interviewed. Residents, other than buyers, included original project beneficiaries, tenants and Phumla residents who live in areas other than Project 2001.

Participants external to Phumla included all the municipal officials directly involved with housing, lawyers, bank officials and business owners.

Thirty-four households interviewed in Project 2001 bought houses, and 23 of these households participated in follow-up interviews one year later. Twenty-nine households were initially listed for follow-up interviews, but six households could not be found, for example, the householder was living somewhere else while extending the house, the householder was on vacation, or the participant was never at home during the time the fieldwork was conducted. The follow-up

interviews had two purposes: to update the status of the transactions (off-register transactions and transactions in the process of registration); and to ensure that the participant was not negatively affected by participation in the research.

Households that bought houses were identified by door-to-door canvassing in Project 2001 and asking residents if they had bought their houses. When potential participants were approached the introduction included identification of the researcher, facilitator and research project as well as other matters that formed part of the ethics agreement.

One specific type of transaction was not investigated in the field, that is, a transaction where the owner was forced to sell to pay a debt owed to money-lenders or shebeen owners. According to one municipal official (027) this type of transaction is common, but according to another (015) it does not happen in Phumla. However, setting aside the conflicting evidence, it was decided not to investigate this type of transaction since it may present a danger to the seller and it is unlikely that the buyer would be prepared to discuss the transaction.

#### **6.4 Project 2001: History and land records**

This section establishes the state of the project transfers in Project 2001. The opportunity to register is closely linked to the successful completion of the project transfers since, if the title deed is not available and correct, registration cannot occur.

Under Project 2001, approximately 1,300 houses were built and ownership was granted to beneficiaries, using a project-linked subsidy (refer to section 2.3). It started in 2000, and by the end of 2001, the final houses were handed over to beneficiaries (Seedorp newspaper 07/07/2000, 16/03/2001, 22/06/2001).

Towards the end of Project 2001, the project appointed a conveyancer who drafted and facilitated the signing of Deeds of Sale. The deeds did not contain the eight-year sales restriction introduced by 10A and B of the Housing Act 107 of 1997 in the year 2001 (refer to section 2.4). However, the deeds contained a pre-emptive sales clause, previously used by the municipality, in



a state-subsidised housing development in the neighbouring suburb of Roseville<sup>24</sup> (see Figure 6.4) (Municipal council minutes 27/07/1999). In turn, the Roseville pre-emptive sales clause was based on a restriction used by the municipality when selling property owned by the municipality to the public.

The pre-emptive clause states:

“The abovementioned property may not be sold or otherwise alienated by the transferor or his or her successors in title within a period of 5 (FIVE) years calculated from the date of sale of the property, unless the transferee makes improvements to the property for a minimum value of R20,000.00 (TWENTY THOUSAND RAND) and/or to a person approved by the transferor and then only after he/she has first offered the property to the transferor. The transferor shall in its absolute and sole discretion determine whether improvements have been made to the property for a minimum value of R20,000.00 (TWENTY THOUSAND RAND).” (Municipal council minutes 27/07/1999; Title deed G/2000)

Essentially, the clause prohibits sales for five years calculated from the date of sale. A property may be sold within the five years if the buyer is approved by the council and/or improvements of R20,000 are made to the property. There are differences between the pre-emptive sales clause and the restrictive sales clause; e.g. a five-year restriction instead of an eight-year restriction.

The project transfers occurred, on average, a year after the deeds of sale were signed; 89% of the project transfers were completed by the end of 2004<sup>25</sup>. Since then, some of the title deeds were transferred; however, by the end of 2009, approximately 38 title deeds remained unregistered (Municipal valuation list 04/2010; Transfer records 2010). In addition, a large number of title deeds had been issued, but a portion of owners received only photocopies of the title deeds from

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<sup>24</sup> Pseudonym. Refer to section 5.6 Ethics.

<sup>25</sup> This is a common problem in state-subsidised housing developments; refer to section 2.4.

the municipality or the title deeds were never delivered<sup>26</sup>. This was confirmed by lawyers and municipal officials (008, 015, 028, 048, 075, 150, 152).

Another problem involves cases where, although the occupier of a house was the legitimate beneficiary, the title was registered in the name of another beneficiary, who occupied a different house. This was discussed by residents (019, 064, 076), community leaders (006, 046, 051, 053, 074) and a lawyer (050). While these incorrect title deeds may be the result of an administrative error, one case was identified where two beneficiaries swapped houses for personal reasons (019). Community leaders reported that there are instances of people (seven cases according to one participant) who, although registered owners of houses which they have never occupied, live in the informal settlement (006, 046, 051, 053, 074). Although the mismatch between occupiers and registered owners may be caused by off-register sales, the evidence suggests that at least a proportion of cases were related to problems in the allocation process.

Finally, applicants qualified for the housing subsidy because they have a spouse or co-habiting partner or dependants (refer to section 2.3). As part of the subsidy guidelines, the applicant and the spouse or co-habiting partner are registered as 50% undivided shareholders of the property. An adult dependant may also be registered as a 50% shareholder. Applicants (later beneficiaries) do not always understand that the spouse or co-habiting partner, who is a 50% shareholder, has ownership rights (022, 029). This misunderstanding was confirmed by a municipal official (015) and community leader (051). The implication of the misunderstanding is that the seller is not always aware that the 50% shareholder must also agree to and sign the transfer documents. The effect of this misunderstanding on transaction-securing strategies is described in section 7.5.2.6(e).

Despite the title deeds that still need to be transferred and the mistakes in registration, transfers in Project 2001 were successful compared to other state-subsidised projects. As mentioned in section 2.4, surveys have estimated that 46% of the title deeds in Western Cape state-subsidised

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<sup>26</sup> It was not possible to establish the exact number of title deeds affected.

housing projects have never been transferred to the beneficiaries (Gordon *et al.* 2011). Although the transfers in Project 2001 were relatively successful, the outstanding project transfers, mistakes in the title deeds and the 50% shareholders did affect transaction-securing strategies in Project 2001. This is discussed further in sections 7.5.2.6 and 8.3.

In June 2001, the Western Cape provincial minister of housing handed over the first house in Project 2001 and, at that time, advised the new owners not to sell their houses (Seedorp newspaper 22/06/2001). Despite this advice, the first off-register sales started occurring in 2001 (029, 076). The next section describes the transaction processes and the transaction-securing strategies observed in Project 2001.

## **6.5 Transactions**

This section explores the research question: How do buyers of state-subsidised houses secure transactions? While the transaction process is described, the focus is on the various transaction-securing strategies used by buyers in Project 2001. The section also discusses strategies that developed to support the transaction-securing strategies. These include strategies to pay the purchase price and transaction costs, and adaptations introduced by lawyers to assist buyers of state-subsidised housing. Another influence on transaction-securing strategies is municipal arrears, since these arrears make off-register buyers visible to the municipality that may lead to threats of eviction. However, first the section will narrate the experiences of three buyers in Project 2001.

### ***6.5.1 Three transaction-securing experiences***

Although there are commonalities in the experiences of Project 2001 buyers, no two buyers conducted a transaction-securing strategy in precisely the same way or encountered the same problems. Therefore, the three examples narrated in the section cannot be regarded as typical. However, the experiences of the three selected buyers provide a substantive background to the discussions that follow.

#### 6.5.1.1 Elizabeth<sup>27</sup>

Elizabeth (020) was born in the Eastern Cape and moved to Cape Town in 1987. In 2002 she moved from Cape Town to Seedorp in search of employment. She rented a house in Project 2001 for two years and paid R300 a month. But she decided to buy a house, in her own words, “because I hate to rent a house, because when I calculate, I notice that I have to spend more money . . . so I decided to buy my own, instead of renting from someone else.”

She asked her friends to tell people that she was looking for a house and in this way found a man who wanted to sell his house because he wanted to return to the Eastern Cape. The seller wanted R10,000 for the house and Elizabeth agreed.

Elizabeth said they went to the police station and signed an affidavit. But they also agreed that the seller “was going to come back, *nê*, and then we go to the lawyers”. The reason they decided to secure the transaction in this manner was “because those days they were not allowed to sell the house, because it was new houses and the municipality didn’t want . . . anyone to sell the house[s]”, referring to the pre-emptive sales clause that restricts sales for five years.

After the seller left Phumla, Elizabeth discovered that he owed R5,000 in municipal arrears. She started paying the amount, but then the municipality agreed to open a municipal account in Elizabeth’s name and in return, she had to get another affidavit describing the sale. Elizabeth obtained the affidavit and she “took those documents back to the municipality and they put everything on the computer, so they know the owner of the house is not here, they know exactly who is responsible for the house.” Although the municipality agreed that she does not have to pay it, she still receives the municipal account of the seller.

At the time of the interview, it had been three years since the expiry of the pre-emptive sale clause, and five years since the sale, but the seller had still not returned to register the transaction. Although Elizabeth feels some sense of security, since she regards the agreement

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<sup>27</sup> Pseudonym selected by participant.

with the municipality as a form of recognition of the transaction, she is aware that the sale needs to be registered. The situation is frustrating for her because “you can’t be able to change it unless the owner of the house is here”.

#### 6.5.1.2 Nyana and Mmapula<sup>28</sup>

Nyana and Mmapula (057) are a married couple that moved from the Eastern Cape to Seedorp in search of employment. Nyana arrived in 2005 and lived in a backyard shack on the property of a Project 2001 house. When Mmapula joined him in 2007 they decided to buy a house, because “renting is not a reliable situation” and they were concerned about their children’s health. To find a house, Nyana posted an advertisement in a public place, asking if anyone wanted to sell a house.

The seller contacted them and asked R22,000 for the house. The seller also suggested a lawyer and Nyana and Mmapula agreed to register, because they wanted to get the title deed and ensure a reliable process, because “most people get robbed” and “the owner return and evict” the buyers. The lawyer explained the process and they signed “a contract” (Deed of Sale). Three and a half months later Nyana and Mmapula received their title deed.

#### 6.5.1.3 Buyiswa<sup>29</sup>

In 2000, Buyiswa (054) moved from the Eastern Cape to a town near Seedorp to look for employment. However she soon moved to Seedorp because a relative found a position for her as a domestic worker. She lived in one of the informal settlements in Phumla and applied for a housing state-subsidy. She was “always checking and checking”, but “didn’t see [her] name in the computers” for a state-subsidy. Then in 2005, her employer found a house in Project 2001 for sale and, in Buyiswa’s words, “now I say that I don’t have the money, and [my employers] say, ‘no we are going to buy a house for you and you’re going to pay us back’.” The purchase price was R12,000; Buyiswa had R2,000 in savings and her employers agreed to loan her R10,000.

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<sup>28</sup> Pseudonyms selected by participants.

<sup>29</sup> Pseudonym selected by participant.

Buyiswa, her employers and the seller went to the lawyers, where they found out that the pre-emptive sales clause period had not expired. They signed a Deed of Sale and paid the seller, but Buyiswa had to wait three years before they could transfer ownership. In the meantime she started paying the R10,000 loan from her employer in instalments of R200. However, in 2008, when the lawyers contacted her, she had accumulated municipal arrears and could not transfer because, “it was difficult to me, I was not paying monthly the [municipal account], I was asking [the lawyers] to be waiting until [2009] so that I can pay everything and pay the money for the [rates] clearance [certificate]”.

Buyiswa paid the municipal arrears and signed the documents for transfer in 2009. She received her title deed after three months and she was happy, because the title deed meant “that the house is mine . . . and no one can say it is theirs”.

The stories of Elizabeth, Nyana and Mmapula, and Buyiswa provide a glimpse of transaction-securing strategies in Project 2001. In the following sections, the variations in transaction-securing strategies are described based on the experiences of all the buyers. After the analysis and theory development, the transaction-securing process of two other participants, Mzuvikile and Lungiswa, will be used to illustrate the theory (refer to section 8.5).

### **6.5.2 Conducting transactions in Project 2001**

Three primary transaction-securing strategies are used in Project 2001: off-register transactions, off-register transactions as an interim strategy before attempting registration, and registration.

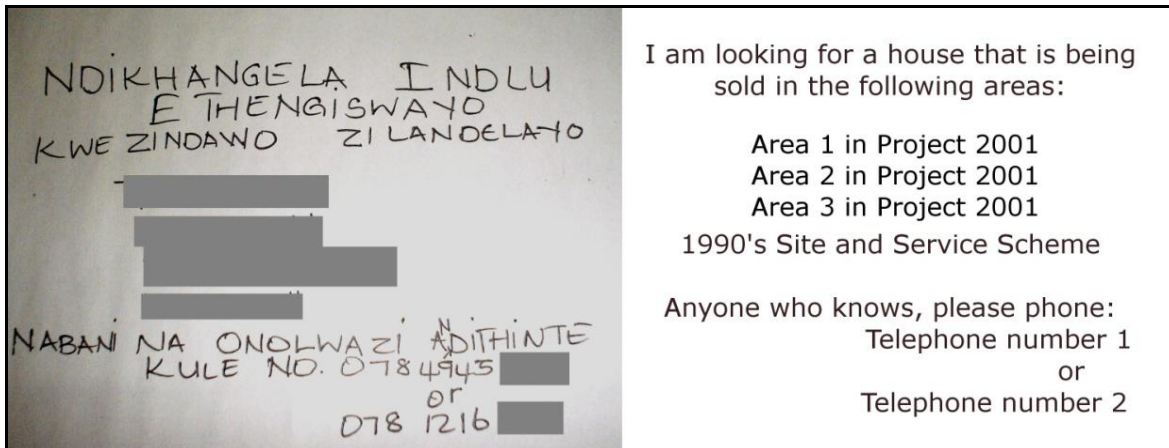
Table 6.2 shows the number of each type of transaction as used by buyers interviewed in Project 2001. Before discussing these transaction-securing strategies, the process of buying a house in Project 2001 is described to provide the context within which these strategies occur.

<b>Transaction-securing strategies</b>	<b>Number</b>
Off-register	4
Interim off-register	9
Registered	23

**Table 6.2: Frequency of transaction-securing strategies amongst research participants**

As mentioned in the discussion of migration (refer to section 6.2.2), sixteen sellers decided to sell because they want to return to the Eastern Cape. In every case, the buyers reported that the seller decided to return to the Eastern Cape, because of employment opportunities, family obligations, financial distress or to retire. Other sellers, who did not return to the Eastern Cape, sold because they had access to another house, they had found work somewhere else, they were divorcing, or were in financial distress.

To find a house for sale, buyers either identified a seller by word of mouth or knew them personally. Residents said that houses were advertised for sale in public places in the neighbourhood; however only advertisements by buyers were found during the field work (see Figure 6.9). This may be understood within the current environment where there is a great pressure on housing (refer to section 6.2) and it is likely that the number of potential buyers outnumbers the number of houses that enter the market.



**Figure 6.9: Advertisement to find a house and translation (Photo credit: L. Roux)**

The competition for houses is demonstrated by the experiences of three buyers. Participant 043 approached a seller only to find that he was pre-empted by another buyer. Another buyer said that he was in competition with two other buyers, but secured the deal by paying a small deposit (016). In a similar case, participant 023 paid half the purchase price and signed an affidavit as proof of the payment, followed immediately by engaging a lawyer to register the transaction. This differs from situations where affidavits are signed to secure off-register transactions (refer to section 6.5.3).

The imbalance in the supply and demand for houses may also pressure the buyer to accept the first house found, but there were exceptions. For example, one shop owner specifically searched and found a house on a main thoroughfare to ensure easy access for his customers (018).

The competition for houses places the seller in a powerful position. In some cases this results in the seller dictating the transaction-securing strategy. Refer to sections 7.4.2 and 7.5.2.2 for a detailed discussion.

Despite the competition for houses, the purchase prices remained relatively static from 2001 to 2010. From 2001 to 2010 the typical starting price for a house in Project 2001 ranged between R18,000 and R20,000 (Transfer records 2001-2010; 016, 018, 021, 022, 023, 031, 033, 035, 036, 037, 038, 043, 055, 056, 062, 063, 071). The sellers and buyers used two methods to determine



the purchase price. In the first method, the sellers may calculate prices in terms of the sales price stated in the title deeds (R18,250) or the valuation as calculated by the municipality and displayed on the municipal account (typically R20,000). According to a municipal official (015) the purchase price may be increased if the seller had improved the house or the buyer may negotiate a lower price if the house is in bad condition. This was confirmed by buyers (023, 035, 036, 054a). The second method of price determination observed was based on misinformation linked to the unintentional misinterpretation of the pre-emptive sales clause (refer to section 6.4) in the title deed. The R20,000 value condition in the pre-emptive sales clause was interpreted by a trusted source of information to mean that houses could not be sold for more than R20,000 (015, 016, 018, 021). Consequently prices in Project 2001 remained close to R20,000 over the ten year period.

The purchase price may also depend on the identity of the buyer or the time available for the transaction. According to a community leader (017) and buyers (016, 070), foreign buyers may be charged more than South African buyers, as there is a perception that they have more money. In contrast, if the sale was conducted between family members the purchase price may be lower than the norm (066, 067). The time available to conduct the transaction-securing strategy may also affect the purchase price; for example a seller might accept the funds the buyer has available because he wants to leave urgently (022, 029). Identity and time also affect the transaction-securing strategies, as discussed in sections 7.5.2.1(b) and 7.5.2.2(d).

Buyers use a variety of information sources when buying a house. These sources include neighbours, friends, family, community leaders, employers, lawyers and the municipality. The municipality is also consulted to obtain information about the valuation of the houses (016, 018, 021), the title deed and current owner (used to confirm that the seller is legally entitled to sell the property) (016, 054b, 076), and the municipal arrears (008, 016, 020, 033, 043).

The next section describes the various transaction-securing strategies used in Project 2001, starting with off-register and interim off-register transaction-securing strategies.



**Figure 6.10: Extension to original house (orange with blue door) to accommodate tenants (Photo credit: L. Roux)**



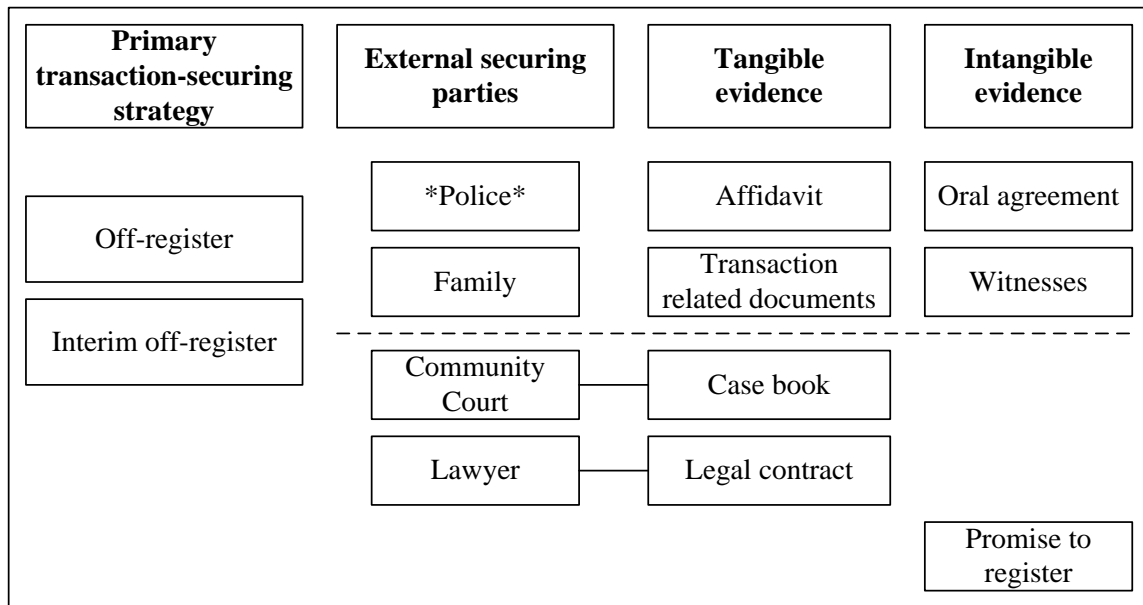
**Figure 6.11: Extension (front portion) to original house (Photo credit: L. Roux)**

### 6.5.3 Conducting off-register and interim off-register transactions

Off-register and interim off-register transaction-securing strategies are similar, but an interim off-register transaction includes a promise or a plan to register subsequent to the off-register transaction (020, 022a, 034, 039, 054b, 063, 067, 072, 076).

The off-register and interim off-register transaction-securing strategies can be classified according to the external securing parties and the evidence used in the transaction (see Figure 6.12).

Outside the buyer and seller, the external securing parties are those who assist in securing a transaction. For example, if the tenure security of the buyer is threatened, the external securing party can exert pressure on the seller to comply with the original agreement. External securing parties in Project 2001 include the family, the community court and lawyers. The police constitute a special external securing party, as discussed in greater detail below.



**Figure 6.12: Off-register and interim off-register transaction-securing strategies**

Tangible and intangible evidence is used by buyers in combination with external securing parties. Tangible evidence refers to any documentary artefact supporting or proving that a

transaction occurred, whereas intangible evidence is any evidence that relies on the continued cooperation of people, e.g. the seller, buyer or external securing parties. Intangible evidence includes oral agreements, witnesses and promises to register (020, 022a, 029, 034, 039, 054b, 063, 067, 072, 073, 076). Furthermore, this type of evidence may also be supported by the seller's identity as a family relation to the buyer (034, 067); a friend (029, 073); membership in a shared ethnic group (070); or having roots in the same village of origin in the Eastern Cape (022a, 076). Affidavits, the case book of the community court, transaction-related documents and legal contracts are tangible evidence.

An affidavit is a declaration signed under oath in the presence of a legally authorised person; in Project 2001 it is usually a police officer. The declaration typically states the names of the seller and buyer, the purchase price and the house address. Even though this approximates the ten requirements of a sales agreement listed in section 2.2.1, according to the lawyers interviewed, affidavits generally do not contain enough information to be regarded as legal sales contracts (050, 075, 152).

Buyers viewed affidavits in two different ways. The first view is that the affidavit is evidence of a transaction and permanently secures the transaction. For example, participants 064 said that they went to the police station in 2003 to get an affidavit as proof of the transaction, because they believed it would protect them against a potential reclaim attempt by the seller. Therefore they believed that the affidavit protected their claim to ownership. The second view is that the affidavit proves that a payment has been made as part of a transaction, which can be rephrased by saying, that the affidavit secures the agreement and the payments in terms of the agreement, but not necessarily the transaction. For example, participant 023 said the affidavit provided assurance that she had paid the seller for the house, whereas participant 029 said he went to the police station to make arrangements to pay the house. Participants 034, 039, 054b, 064 made similar statements. In all these cases, the participants said that after obtaining the affidavit they went to the lawyer (023, 029) or planned to go to the lawyer (020, 054b, 067) or municipality (034, 039) to "finish all the paper work" (039) or "for changing the title deed" (023). This indicates that the affidavit was regarded as one component in the transaction-securing process;

the affidavit secured the agreement and the payments, but only provides temporary security until the ownership is transferred.

The police represent a special external securing party, since buyers may believe that police's participation in affirming the affidavit attaches special importance to the document. This belief is reaffirmed by other uses of affidavits. For example, affidavits are also used to affirm personal information as part of official applications, such as applying for a housing or municipal indigent subsidy (049,176; refer to sections 2.3 and 6.6). Affidavits are also used by residents to provide evidence of small monetary loans or cash payments unrelated to transactions involving houses (049, 076). None of the buyers interviewed who used affidavits believed that the police will assist them in protecting the transaction in a dispute (020, 029, 034, 035, 039, 054b, 064, 067), although it is possible that buyers may have believed this in the past. On the other hand, buyers may believe that the police will assist them, if the seller reclaims the house, to recover the money paid as part of the transaction. This belief may be based on experience, for example, participant 035 obtained an affidavit from the police, but a few years later the seller attempted a reclaim. Participant 035 took the seller to the police to get his money back and in this he was successful, even though the seller reclaimed the house. Thus, within the context of this dissertation, the police are regarded as a special type of external securing party, since they participate in affirming the affidavit, but do not provide continued support in securing such a transaction, although they may offer some protection in terms of the money paid as part of the transaction.

Affidavits are the most commonly used type of tangible evidence (see Table 6.3). Police officers said in 2009 that they stopped affirming affidavits for house sales after a directive from the station commander (049, 076). However, affidavits are still being used for this purpose in Project 2001. For example, participant 039 conducted an off-register transaction using an affidavit in 2009 and lawyers interviewed in 2010 said that their clients still bring affidavits as a proof of sale (150, 152). Affidavits supporting transactions in Project 2001 may also be affirmed outside of Phumla, e.g. one case was identified of transacting parties signing an affidavit at a police station in the Eastern Cape (034).

The community court is the only Phumla organisation involved in securing transactions and the court and the transaction-securing procedures conducted by the court are described in section 6.5.4.

When a family acts as an external securing party, the sale is discussed and agreed upon by family members. Therefore the transaction is secured through recognition from the seller's family members (076). Family agreements also occur when a transaction is conducted between two family members and the rest of the family acknowledges the sale (067). In the former case the family members were the parents of the seller. In the latter case, the seller was an uncle of one of the buyers and the transaction was discussed with the buyer's parents.

Lawyers may be involved in securing transactions categorised as interim off-register transactions. This involvement occurs when the transacting parties sign a legal contract agreeing to register, because registration cannot be initiated at the time of the sale. For example, participant 076 could not register a transaction because the title deed was not available. Legal contracts are discussed in greater detail below.

Documents other than affidavits are also used to support agreements, although they do not contain details of the transaction agreement itself; for example, the title deed (still in the name of the seller); bank receipts or note books showing payments by the buyer to the seller; death certificates and medical certificates (020, 034, 039, 063, 073).

Municipal accounts are another type of transaction-related document. The municipal account is a monthly financial statement of monies owed to the municipality by the account holder, who is typically the registered owner. Buyers believed that the municipal account affirms ownership; but the accounts were not used to secure transactions. None of the participants referred to the municipal account as part of a transaction-securing strategy; for example, a transfer of the municipal account for a given property to a buyer provides evidence that the ownership is transferred. Participants who conducted off-register sales expressed concern that the municipal account was in the name of the seller (020, 063, 064), which is reasonable since they receive an

account every month showing the name of the seller. A municipal official also said that residents may view the municipal account as proof of their ownership (015). This belief may also be held by buyers who conducted registered transactions. For example, although participant 071's title deed is held in safekeeping by his employer, he also stated that "I've got the municipality [account] and it is in my name and my wife's also", indicating that he would use the municipal account to prove his ownership.

Legal contracts constitute tangible evidence associated with interim off-register transactions. These contracts are used when there is a legal impediment to a sale; for example the title deed has not been transferred from the municipality to the beneficiary (076). The contract is drafted by a lawyer and signed by the seller and the buyer. The contract recognises that money has been exchanged for a house and that the parties agree that the transaction will be registered once it becomes possible; for example the title deed becomes available. Although this type of contract specifies future registration, it is part of an interim off-register transaction-securing strategy since the contract in itself does not initiate the transfer of ownership. This type of legal contract cannot be regarded as a Deed of Sale, because a Deed of Sale can only be drawn up between the registered owner and the buyer. Using the example above, if the title deed has not been transferred from the municipality to the beneficiary, the beneficiary is not the registered owner and cannot sell the property using registration.

Intangible evidence includes oral agreements, witnesses or a verbal promise to register (020, 022a, 029, 034, 039, 054b, 063, 067, 072, 073, 076). An oral agreement is an agreement without any supporting documents. This type of agreement is colloquially referred to as a gentleman's handshake, a "Xhosa handshake" or a "street deal", although these terms may also refer to an off-register sale with documentary evidence or an affidavit. Witnesses may be family members or neighbours. With a promise to register, the seller is usually planning to move away from Phumla, but agrees to return in future to complete registration.

The different types and number of evidence and external securing parties used in off-registered or interim off-register transactions by participants are given in Table 6.3.

	<b>Off-register</b>	<b>Interim Off-register</b>	<b>Total</b>
<b>Intangible evidence</b>			
Oral agreement	2	2	4
Witnesses	-	2	2
Promise to register	n/a	9	9
<b>Tangible evidence</b>			
Affidavits	3	5	8
Case book	-	2	2
Transaction related documents	3	2	5
Legal Contracts	-	1	1
<b>External parties</b>			
Family	-	2	2
Community Court	-	2	2
Lawyer	-	1	1

**Table 6.3: Numbers and types of external securing parties and evidence used in off-register and interim off-register transaction-securing strategies by buyers interviewed in Project 2001**

In Project 2001 the external securing parties and evidence were used in different combinations, except for the case book which was used only with the community court and a legal contract which was always associated with a lawyer. Furthermore, if external securing parties and evidence were used in combination, these did not necessarily occur at the same time, for example a transaction may start with an oral agreement and two years later an affidavit is signed.

It was observed that buyers attempted to secure transactions by accumulating evidence and external securing parties. This typically occurred in response to fears that the seller might



reclaim their house or actually did threaten to reclaim the house. Reclaims are discussed further in sections 7.5.2.2(a) and (b).

Transactions using lawyers and legal contracts are classified as interim off-register transaction-securing strategies, because the eventual registration of the transaction is a part of the written agreement. However, any combination of external securing parties, tangible and intangible evidence grouped with off-register transactions (see Figure 6.12) may be used in interim off-register transactions. Another type of interim off-register transaction is a transaction conducted with the assistance of the community court and is discussed in the following section.

#### ***6.5.4 Interim off-register transactions: Community court***

Various current and historical leaders and organisations in Phumla were identified in the research project. These included political organisations, residents' associations, business groups, welfare and education committees and their members. However, only the community court is involved in securing land transactions. This section discusses the community court and their transaction-securing process.

Limited documentary evidence suggests that the community court has existed since 1980 and perhaps earlier<sup>30</sup> (051; Seedorp newspaper 04/12/1985). The executive members of the court are elected annually (017, 051, 074). Usually, most of the same people are elected, although their function in the executive might change (017, 051, 074).

It is difficult to establish the legal status of the community court. The members of the court are also executive members of the Community Police Forum and the Neighbourhood Watch. The Community Police Forum serves as a liaison between the community and the police and is

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<sup>30</sup> It was not possible to conclusively establish the origins of the community court. A newspaper reported the departure of the "Phumla Civil court judge" who served in the position from 1980 to 1985 (Seedorp newspaper 04/12/1985). In 1985 participant 051 became a member of the court. The information from the newspaper article may indicate that the court was originally created under section 11(1) of the Black Administration Act 38 of 1927 and disbanded under the Special Courts for Blacks Abolition Act 32 of 1986. If this is the case, the current existence of the court indicates that it continued to function, although in a different form.

created in terms of sections 205 and 206 of the Constitution and the South African Police Service Act No. 68 of 1995 (ss. 18 – 23). The Neighbourhood Watch is a crime prevention organisation that must be registered with the local police, and the Community Police Forum. Neighbourhood Watches are regulated by the Western Cape Provincial Constitution and Code of Conduct for Neighbourhood Watch Structures (1999, 2003).

To speculate, the community court may be officially recognised through the overlapping membership with the Community Police Forum and Neighbourhood Watch. These community policing structures are supported at local level by the police and Magistrate's court (051). The intertwining of the three entities - the community court, the Community Police Forum and the Neighbourhood Watch – is suggested by the way Phumla residents referred to the three organisations as one. Invariably, residents referred to “the Centre”; the community centre that is the shared office space of all three organisations. Other participants referred to the court executive members by name, with no distinction according to organisation.

The court depends on negotiation to resolve problems and has little power to enforce a decision. If the parties to a dispute refuse to abide by the court's decision or to reach a settlement through consensus and compromise, the court refers the parties to a lawyer or Magistrate's court. In this way, the court deals with domestic disputes, paternity suits and agreements about the repayment of loans and community disturbances (015, 017, 051, 074).

The election of the court executives, the dependence on negotiation and the types of cases heard bear similarities to the street committees (first tier) and their executive committees (second tier) in Cape Town townships as described by Burman and Schärf (1990). The similarity between the Phumla community court, street committees and rural village customary courts is a shared understanding that the court's purpose is reconciliation and settlement rather than judgment (Burman and Schärf 1990). According to an executive member of the Phumla community court, the aim of the court is conciliatory, in that “the people must be, live together . . . people must understand [one] another”.

The community court assisted in approximately 20 – 30 transactions from 2003 to 2009 (074) and uses the following process. The seller and buyer make an agreement, with the court executives as witnesses. As part of this event the court establishes if the seller is the “real owner” – a term used by an executive member (074). The title deed may be exchanged as part of the process and an affidavit may be signed. The details of the sale are noted in the court’s case book and witnessed by the court’s executive members. The court recommends that once the purchase price is paid, the parties to the transaction should go to a lawyer to have “the title changed” (051). For example, the court advised participant 072 to “go to the lawyers so that they will know that this house has been sold”.

On the surface, the process used by the court seems to work in harmony with the legal transaction process. However, there are two fundamental issues in the way the court deals with sales. The first issue is the establishment of the “real owner”. This is illustrated by a transaction conducted by the family members of a registered owner who became mentally disabled due to an accident (063). The family provided the title deed, the owner’s identity document and a medical certificate confirming the owner’s disability as evidence of their power to act in his stead. The community court accepted these documents as sufficient proof and recognised the family members as sellers (“real owner”). However, from the perspective of statute law (Alienation of Land Act 68 of 1981), the legal owner is the only person who may sell the house, until it is legally established that he is incapable and a legal guardian appointed. Therefore, even though the buyer approached a lawyer, the transaction cannot be registered until the guardianship problem is resolved.

The second issue is how registration is viewed by the community court. Based on interviews, the court regards the signing and witnessing of the agreement as the moment at which ownership is transferred, and believes that the “changing of the title deed”, to quote an executive member (051), is an administrative task performed by the lawyer. It suggests an alternative interpretation of the community court’s role; although the community court supports registration (051, 074), their continued involvement in securing transactions can be interpreted as a bid to retain a position of power and influence in Phumla.

The two issues stemming from the community court process - identification of the person who may act as the seller and the actual time of ownership transfer - may have legal consequences. A registered transfer must be conducted by the legal owner or a legal representative of the owner. Resolving ownership, for example with estates or the case mentioned earlier where the owner was incapable of acting, requires additional legal procedures. This problem may be compounded because the court, as well as the buyer and sellers, may believe that the actual transfer of ownership occurs before consulting a lawyer. According to the law, transfer occurs when the Registrar registers the deed (Deeds Registries Act 47 of 1937, s. 13). Thus, if the purchase price is paid before this time, which is in fact the common practice in Phumla (refer to section 6.5.2), the buyer may lose both the money and the house or create a situation where the buyer is living in the house but cannot obtain legal transfer.

At present, the community court process and registration are at odds with each other, despite the attempts made by the community court to harmonise the two. However, the potential exists to create a hybrid system comprised of the community court process and registration.

Buyers do regard the community court process as adequate in securing transactions, although this changed over time. Although the court advises the parties to go to a lawyer, cases were identified in which a long period passed before a lawyer was consulted by buyers. In one case the lawyer was approached (after a four-year delay) because free legal services were offered (072). In another case, the buyer wanted to confirm that she was the owner, before building extensions to the house (a two-year delay) (063). Both the buyers felt secure in the interval before going to the lawyers, indicating a qualified recognition of the community court's power in securing the transactions.

The community court is an external securing party in terms of the classification scheme in section 6.5.3. Figure 6.12 also shows that the case book of the community court represents a type of tangible evidence.

### ***6.5.5 Conducting registered transactions***

The third primary transaction-securing strategy used in Project 2001 is registration. Registration was used or attempted in twenty-three of the transactions conducted by participants (see Table 6.2). The section first discusses the title deed and the Deed of Sales from the perspective of buyers, followed by a typology of registered transactions.

Most buyers regard the title deed (the result of registration) as the most important evidence of ownership (016, 020, 021, 023, 024, 025, 026, 033, 034, 035, 036, 039, 043, 054a, 057, 063, 064, 066, 070, 071, 076). Sellers also use the title deed to threaten or actually reclaim houses sold off-register (refer to sections 7.5.2.2(a) and (b)). This further demonstrates the power imbued by possession of the title deed.

As discussed in section 2.2.1, the registration process starts when the Deed of Sale is signed by the transacting parties. As opposed to the legal contract mentioned above, a Deed of Sale does initiate the registration process. However, registration is not necessarily the inevitable outcome of a Deed of Sale.

Some research participants believe that the Deed of Sale affords near-complete security. In fact, two participants seemed to be satisfied with the Deed of Sale as adequate proof of ownership and were not concerned about completing registration (023, 035b). This belief is further supported by the extensions they added to their houses; for example, participant 035b estimated that he spent more than R30,000 on extensions and improvements. For nine participants, belief that the Deed of Sale provides security is supported by their experiences. Four buyers waited one to four years for transfer after signing Deeds of Sale (021, 022b, 054a, 066). The five other buyers had signed Deeds of Sale, but were still waiting to transfer at the time of the fieldwork, with the delay ranging from two to five years (016, 024, 036, 056, 072). None of these buyers had any problems with the transactions despite the long delays. However, two participants experienced challenges to their ownership because of the delay; participant 026 was threatened by the seller with a reclaim three years after signing a Deed of Sale, and participant 043 was threatened with eviction by the municipality five years after signing the Deed of Sale (refer sections 7.5.2.2(b) and

7.5.2.3(b)). The relation between time delays and transaction-securing strategies will be discussed further in section 7.9.

The registration transaction-securing strategies are grouped according to four sub-categories. The first sub-category includes sellers and buyers who conduct a registered transaction without direct assistance by a third party other than the lawyer. The other subcategories are linked to employer-assisted transactions. In these transactions, the employer always provides financial loans or donations and sometimes assists with registration. Employer-assisted transactions require separate consideration since the transaction-securing strategy decisions are influenced to different degrees by the employer. The number of transactions in each category and sub-category are shown in Table 6.4.

<b>Strategy category</b>	<b>Sub-category</b>	<b>Number</b>
Off-register		4
Interim off-register		9
Registered	Buyer controlled	15
	Employer-assisted	2
	Employer-controlled	4
	Employer as intermediate buyer	2

**Table 6.4: Categories of strategies used to secure transactions**

Buyers who were assisted by employers in initiating registration, but who were ultimately responsible for the process of registration, fall into the “employer-assisted” sub-category (016, 054a). The “employer-controlled” sub-category includes transactions in which an employer assumes control of registration, but where the house is registered in the name of the employee (024, 032, 055, 071). In the last sub-category, the employer acts as an intermediate buyer and the property is registered in the name of the employer with the understanding that, once the employee has paid off the house, it will be transferred (031, 037).

When employers control transactions or act as intermediate buyers, they occupy a greater position of power in relation to the employee. This is because the employer has control over the tenure security of the house and the transaction is linked to the employment relationship as well as the financial loan provided by the employer. Only one of the six participants involved in an employer-controlled or employer as intermediate buyer transactions had a letter from her employer detailing the agreement, which was written after the initial transaction (031). The lack of a written contract between the employer and employee may place the employee in a vulnerable position<sup>31</sup>, since the employee has no tangible proof of the agreement.

However, buyers who were assisted by their employers were generally not concerned that their employer may change or retract the agreement. In two employer-assisted transactions, buyers did not have concerns about their tenure security (016, 054a). Two of the four buyers involved in employer-controlled transactions were also not concerned about their tenure security, but insisted on anonymity because they were worried about the employer's reaction to the interview (024, 032). The two other participants who were involved with employer-controlled transactions felt secure in their tenure (055, 071). Initially the two participants whose employers acted as intermediate buyers felt secure (031, 037). However, in both cases, the employers decided to emigrate and the employees lost their jobs. Subsequently both participants became concerned about their tenure security, because they found it difficult to continue payments.

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<sup>31</sup> Four of the participants who conducted transactions involving their employers are employed as domestic workers. Ally (2009) points out the complex nature of the relationships between domestic workers and employers in South Africa. She argues that domestic workers generate forms of informal power and informal negotiating mechanisms through the personalised relationships with employers and the intimate nature of their work. Therefore the opposite may be true, that a formal housing loan contract between employer and employee may be detrimental to the employee, because it will weaken the forms of informal power. In addition, Ally (2009) notes that when an employer purchases a house for a domestic worker it is an example of maternalism, a form of power and control through apparent benevolence.

### ***6.5.6 Other transaction related strategies***

Various means to support transaction-securing strategies developed in response to problems and threats. These means are related to financial and legal matters as well as risks associated with the seller.

According to buyers (018, 020, 026, 035a, 036, 038, 054, 063, 066, 070, 076) and lawyers (050, 075, 150, 151), the payment of the purchase price, in off-register and registered transactions, is usually a once-off cash payment. Lawyers reported that often, by the time the parties consult lawyers, the purchase price has already been paid (075, 150, 152).

Although buyers usually pay sellers in one cash payment, they may also use a variety of other payment options. Initially, buyers may decide to pay only part of the purchase price. This occurs because the buyer wants to secure the agreement to sell<sup>32</sup> (016, 023); the buyer cannot afford the full purchase price at the time of sale (022, 034, 039, 067); the lawyer advises to wait for successful registration before paying the remaining money (016, 022, 055); or the buyer wants to ensure that the seller fulfils other legal obligations, such as registering a transaction or signing for transfer (016, 034). Buyers and sellers may also agree to a long-term payment plan (064, 073).

Another payment plan is particular to transactions in which employers are involved. Many of these transactions are initiated by the employer offering to lend the employee money to buy a house as a way to help the employee to access better housing. These loans tend to be interest-free (016, 024, 031, 037, 054a, 055) and monthly payments are deducted from the employee's salary (016, 031, 037, 054a, 055). However, the payment schedule may be flexible during periods when the employee needs money for other purposes (024, 031, 037).

Registration as a transaction-securing strategy is also supported by the adaptations to the registration process introduced by the lawyers (refer to section 2.2.1 for a description of the

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<sup>32</sup> Refer to the discussion in section 6.5.2 regarding the competition for houses.



conventional registration process). The first type of adaptation is a response to the pre-emptive sales clause (refer to section 6.4), where lawyers recognised that their clients will buy houses despite the pre-emptive sales clause. Initially, lawyers made applications to the council to waive the clause. However, lawyers reported that applications were generally refused by the council so they consequently stopped applying (075, 150, 151). The transfer records show that transactions were registered during the pre-emptive sales period; therefore the council did waive the clause in some cases (Transfer records 2001 - 2010). Because of the difficulty of gaining approval, lawyers had the transacting parties sign a Deed of Sale despite the pre-emptive sales clause to provide their clients a measure of protection, particularly against sellers. Registration then occurred once the pre-emptive sales clause expired.

It is difficult to determine the number of registered transactions affected by the pre-emptive clause from the transfer records. This is because lawyers interpret the commencement date of the pre-emptive clause in different ways. Briefly, the commencement date may be the date of occupation, the date of sale, or the date of transfer (075, 105, 151; Transfer records 2001 - 2010)<sup>33</sup>. Cases of all three interpretations were identified in the field.

The delay caused by the pre-emptive sales clause, despite the adaptation made by lawyers, introduced another legal problem. When it became possible to complete registration, sellers may not be available to sign for transfer, often because sellers moved back to the Eastern Cape as mentioned in section 6.2.2. The lawyers started to obtain a Power of Attorney from the sellers when the Deed of Sale was signed, so that the lawyers could act for the sellers (150, 151). Conventionally a Power of Attorney is signed when all the documents and certificates for registration are ready (refer to section 2.2.1). This second adaptation is also used by lawyers in

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<sup>33</sup> The different interpretations can be considered in relation to the transactions conducted by participants. If the pre-emptive period starts from the date of transfer, eighteen transactions were affected. However, in eight of the eighteen transactions, the project transfer to the beneficiary occurred only after 2004 meaning the restrictive period was extended in these cases. On the other hand, if the pre-emptive sales clause is calculated from the date of sale, nine transactions are affected by the restriction. The same number of transactions is affected if the pre-emptive clause is calculated from date of occupation.

sales not affected by the pre-emptive sales clause; since some sellers want to leave the area urgently or during the three months (approximately) it takes to complete the registration process.

The project transfers that have not occurred in Project 2001 are also a problem (refer to section 6.4). However, some lawyers complete the two transfers at the same time if the municipality agrees; first, from the municipality to the seller and, then, from the seller to the buyer (075, 150). The title deeds that were transferred, but not delivered, to the owner do not pose a problem for registration. Lawyers are aware of this, and in such cases contact the municipality to obtain the title deeds. A more costly process is when the title deed is missing or destroyed (050, 075, 152). To replace the original title deed required for registration, the owner (although in Project 2001 the buyer tends to assume this responsibility) must pay the legal fees, deeds registry fees and advertising costs.

A third adaptation lawyers have made to the registration process is related to financial matters. Lawyers permit buyers to deposit payments into the lawyer's trust account to accumulate the money necessary to pay the outstanding municipal account (to obtain rates clearance certificate - refer to sections 2.2.1 and 7.5.2.6(c)) and the transfer costs (075, 150, 151). However, the number of these payments may be limited by the lawyer.

While some lawyers use all the adaptations, others use only some of them, and others none, preferring to retain conventional practices (050, 075, 150, 151, 152) (refer to section 2.2.1). However, the lawyers who are consulted most frequently<sup>34</sup> by Phumla residents use these adaptations.

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<sup>34</sup> These are lawyers who are recommended by other buyers as sympathetic to residents who buy low-cost houses, lawyers whose offices are close to the municipality buildings, lawyers who were responsible for the original project transfers, and lawyers known to residents through other legal matters.

## **6.6 Municipality and off-register transactions**

The main interactions between the municipality and off-register buyers occur because of outstanding municipal arrears. During debt-collection exercises, the municipality identifies off-register sales through unpaid accounts. Outstanding municipal arrears also make off-register buyers, and buyers in the process of registration, vulnerable to eviction by the municipal authorities.

In Project 2001, residents receive municipal accounts for rates, water, and services such as refuse removal. The account is addressed to the registered owner with some exceptions; for example three cases were identified where the municipality opened new accounts in the names of off-register buyers (020, 022, 029 and refer to section 7.5.2.3(a)). Electricity is supplied using a pre-paid system. Residents are assisted by the municipality with their municipal arrears in two ways: the indigent policy and debt write-off exercises. The current municipal indigent policy was introduced in 2001<sup>35</sup> (Municipal council minutes 31/05/2001). This policy provides residents with subsidised or free services funded by the national government and administered by the municipality. The municipality also conducts debt write-off exercises, and accordingly, wrote off the outstanding arrears of indigent residents in 2004 and 2006 (Municipal council minutes 19/10/2004, 17/10/2006). From 2007, the debt write-off exercises have occurred twice a year (Municipal council minutes 28/03/2007, 21/08/2007, 20/05/2008, 13/11/2008, 27/05/2009, 20/10/2009).

Municipal debt collection exercises also brought off-register sales in Phumla to the attention of the council. After debt collection exercises, municipal officials reported to the council that off-register owners refused to pay outstanding municipal accounts (Municipal council minutes 28/01/2003, 17/10/2006, 24/06/2009). According to municipal officials, the off-register owners said that they did not want to pay because the accounts were still in the name of the registered owner (Municipal council minutes 19/10/2004). The off-register owners were also afraid that

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<sup>35</sup> The indigent policy generally remained the same, but has been amended to allow for increases in the subsidised amounts.

previous owners or their families might return and claim the houses after they had paid the seller's arrears (Municipal council minutes 19/10/2004). Off-register buyers are also aware that, if the municipal account is paid, they will not come to the notice of the municipality. To quote participant 034 "we keep paying the [municipal account]<sup>36</sup> . . . when you pay the [account] . . . there cannot be a problem".

Furthermore, outstanding municipal arrears make buyers vulnerable to threats by the municipality. Two research participants reported that municipal officials approached them because of high outstanding municipal accounts in 2010 and threatened them with eviction (043, 064). In both cases, the participants were in the process of attempting to register the sales transactions. This threat resulted in renewed efforts by the buyers to register the transactions. The effect of eviction threats by the municipality on transaction-securing strategies is discussed further in section 7.5.2.3(b).

## **6.7 Summary**

This chapter presented the Project 2001 case study. The objective of this chapter was to describe the Project 2001 within which transaction-securing strategies occur and explore the means by which buyers secured transactions.

The larger neighbourhood context of Project 2001 is characterised by a significant pressure on housing. The pressure on housing is due to the historic lack of housing, migration and population increases in Phumla. In section 8.2 these characteristics are discussed in relation to transaction-securing strategies.

The status of the land records in Project 2001 also affects the transaction-securing strategies and is discussed in section 8.3. As discussed in this chapter, the pre-emptive sales clause, which

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<sup>36</sup> "Municipal account" is a substitution for "rent account" in this quote. Many participants refer to paying the municipal account as paying the rent, but participants who were interviewed were not under the impression that they are tenants, they know they are paying services and rates, and not rent. However, a municipal official stated that some residents do think they are paying rent and that they are municipal tenants (015).

restricts the sale of house for five years, was included in the title deeds. Furthermore, title deeds were transferred over a period of four years, a number remain outstanding and there are also incorrectly registered title deeds. In addition, there is a misunderstanding amongst beneficiaries of 50% undivided shareholders; beneficiaries may not be aware that there is a 50% shareholder and that the shareholder has to agree to a sale.

The next chapter will examine decision of buyers in relation to transaction-securing strategies. This chapter described the types of transaction-securing strategies in Project 2001. The three primary categories are off-register, interim off-register and registered transactions. In addition, various external parties and types of evidence are used to secure transactions. This section did not discuss the changes in transaction-securing strategies over the ten years since the completion of Project 2001. This is addressed in section 7.9.

Additional approaches were also developed to support transaction-securing strategies. These include payments arrangements for the purchase price, transfer costs and the municipal arrears of the seller. Lawyers also adapted the conventional registration process to assist buyers. These adaptations were in response to the pre-emptive sales clause and a missing seller which delays or prevents registration.

The relationship between off-register buyers and the municipality is related to outstanding municipal arrears. The municipal arrears of off-register buyers make them visible to the municipality and in turn, they become vulnerable to municipal eviction threats. Municipal arrears - whether due to the previous or current owner - therefore affects transaction-securing strategies.

The next chapter analyses transaction-securing strategies in Project 2001 and develops theory explaining why buyers decided to register or not.

## Chapter Seven: **Project 2001: Analysis and Findings**

### **7.1 Introduction**

This chapter presents the findings and analysis of Project 2001 data, along with theories that explain why buyers used or did not use the registration system. According to the municipal officials and lawyers interviewed the main reasons for off-register transactions in Project 2001 are expensive transfer costs and lack of education (001, 015, 075, 152). This chapter identifies a range of other reasons through the analysis of data from other research participants and aims to develop substantive theory explaining land registration usage, based on the experiences of buyers with off-register and registered transactions.

The argument is that by identifying the beliefs buyers hold towards transaction-securing strategies it is possible to explain their decisions. Referring to Figure 7.1, which outlines the chapter structure and flow, the analysis starts with the definition of the transaction-securing behaviours in terms of the guidelines contained in the theoretical framework (refer to section 4.2.2). Next, the beliefs and factors used by buyers in the evaluation of transaction-securing behaviours are presented. These beliefs and factors emerged from the coding and constant comparison cycles (refer to section 5.4.2). Each belief and factor is categorised according to the constructs identified in the theoretical framework; the attitude towards behaviour, perceived subjective norm, perceived behavioural control and actual control. The theoretical models are constructed through this discussion.

In line with the Theory of Planned Behaviour the analysis and theoretical models are based on the salient beliefs of the participants (refer to section 4.2). Consequently, in this research, it is assumed that the participant buyers spoke about their most important beliefs, even though a buyer may have held secondary beliefs that were used in the evaluation of transaction-securing strategies (refer to section 5.4.2). As a reminder, validation strategies, such as, triangulation, were used to account for any biases in the data (refer to section 5.5).

The analysis continues with identification of the loci of power and regulatory structures in Project 2001 (refer to section 4.3), as components of the buyer's transactional environment.

	<i>Section</i>
Behaviours	7.2
Attitude towards Behaviour	7.3
→ Personal objective beliefs	7.3.1
→ Transactional objective beliefs	7.3.2
Perceived Subjective Norm	7.4
→ Neighbours, friends and family	7.4.1
→ Seller	7.4.2
→ Community court	7.4.3
→ Municipality	7.4.4
→ Employers	7.4.5
→ Lawyers	7.4.6
Perceived Behavioural Control & Actual Control	7.5
→ Capacity	7.5.1
→ Access to external securing parties	7.5.1.1
→ Financial costs	7.5.1.2
→ Information	7.5.1.3
→ Assistance from employer	7.5.1.4
→ Autonomy	7.5.2
→ Buyer-associated factors	7.5.2.1
→ Seller-associated factors	7.5.2.2
→ Municipality-associated factors	7.5.2.3
→ Lawyer-associated factors	7.5.2.4
→ Employer-associated factors	7.5.2.5
→ Legal framework-associated factors	7.5.2.6
Transactional Environment	7.7
Buyer - Security/Threat - Loci of Power cycle	7.8
Time	7.9

**Figure 7.1: Flow and structure of Chapter 7**

It is worth noting that the analysis also resulted in the expansion of the original theoretical framework. Firstly, the Buyer - Security/Threat - Loci of Power cycle is added to incorporate the analysis of the sequential transaction-securing strategies and the role of the loci of power in securing and threatening transactions (refer to section 7.8). Secondly, although time underlies all phenomena, the relation between time and the transactional environment is made explicit. This

increases understanding of the changes in the transactional environment, such as the adaptations lawyer made to registration procedures (refer to sections 6.5.6 and 7.9.1). Making time explicit in the transactional environment also serves to clarify the role of time in individual transactions, for example, the effect of the delay introduced by an interim off-register transaction on the successful completion of registration (refer to sections 6.5.3 and 7.9.2).

## **7.2 Behaviours**

The behaviours in Project 2001 were defined in terms of action and time consistent with the theoretical framework described in section 4.2.2.

After the first cycle of coding and constant comparison (refer to section 5.6.2), each individual transaction-securing strategy was sorted according to action and time. The actions are the transaction-securing strategies, for example “to transact off-register”. Through inspection it was found that time described in years or months is not useful, instead time needs to be related to events; in particular, events which caused a change in the beliefs associated with an action. For example, a buyer uses a set of beliefs to evaluate registration. However after consulting a lawyer and obtaining new information, these beliefs change, resulting in a new evaluation of registration. Therefore an event, that is, consulting a lawyer, separates the transaction-securing process into two time periods. Thus the time elements are: “before consulting a lawyer” and “after consulting lawyer”.

Using event-associated time-elements with the actions to define the behaviours, also acknowledges that a sequence of events occurred. This is especially important in analysing transaction-securing processes consisting of more than one transaction-securing strategy. In this way, each sequence of strategies was segmented for categorisation while maintaining the context within the transaction-securing process. Six preliminary behaviours were identified during this sorting process.

After the preliminary identification, the sets of codes associated with each individual behaviour were compared across buyers. This comparison showed that some behaviours shared similar



codes, or to put it another way, the buyers shared the same beliefs when evaluating these behaviours. Therefore these were combined to create four behaviour categories. Table 7.1 summarises the preliminary behaviours and the final behaviours.

Final behaviours			Preliminary behaviours	
	Action	Time	Action	Time
1	Transacting off-register	when buying a house	To transact off-register	When buying a house
			To transact off-register as interim measure	When buying a house
2	Registration	after conducting off-register transaction & before consulting a lawyer	To register a transaction	After conducting off-register transaction & before consulting a lawyer
			To register a transaction	After conducting an interim off-register transaction & before consulting a lawyer
3	Registration	when buying a house & before consulting a lawyer	To register a transaction	When buying a house & before consulting a lawyer
4	Registration	after consulting a lawyer & before transfer	To register a transaction	After consulting a lawyer & before transfer

**Table 7.1: Transaction-securing behaviours identified in Project 2001**

While the behaviours themselves are self-explanatory, it is necessary to highlight some aspects to prevent misunderstanding. The third behaviour in the table is “registration when buying a house and before consulting a lawyer”. This behaviour excludes all transaction processes involving off-register transactions. The fourth behaviour, “registration after consulting a lawyer and before transfer” includes transactions where the transacting parties initiated registration by signing a Deed of Sale, but also those where the consultation was limited to gathering information.

The following sections categorise the beliefs used by Project 2001 buyers to evaluate transaction-securing behaviours. Buyers used a selection of beliefs from all four categories to evaluate a transaction-securing behaviour. The categories include: attitude towards behaviour, perceived subjective norm, and the perceived and actual behavioural control constructs of the Theory of Planned Behaviour.

### **7.3 Attitude towards behaviour**

The attitude towards a behaviour, as explained in section 4.2.4, is formed by beliefs about the outcome consequences (instrumental aspect) and the experience of performing a behaviour (experiential aspect).

Analysis showed that the attitudinal beliefs form two instrumental aspect subcategories: personal objective beliefs and transactional objective beliefs. The personal objective category includes beliefs about outcomes of the transaction-securing behaviour that affect the buyer personally. The transactional objective subcategory is composed of beliefs about the desired consequences of a particular transaction-securing behaviour.

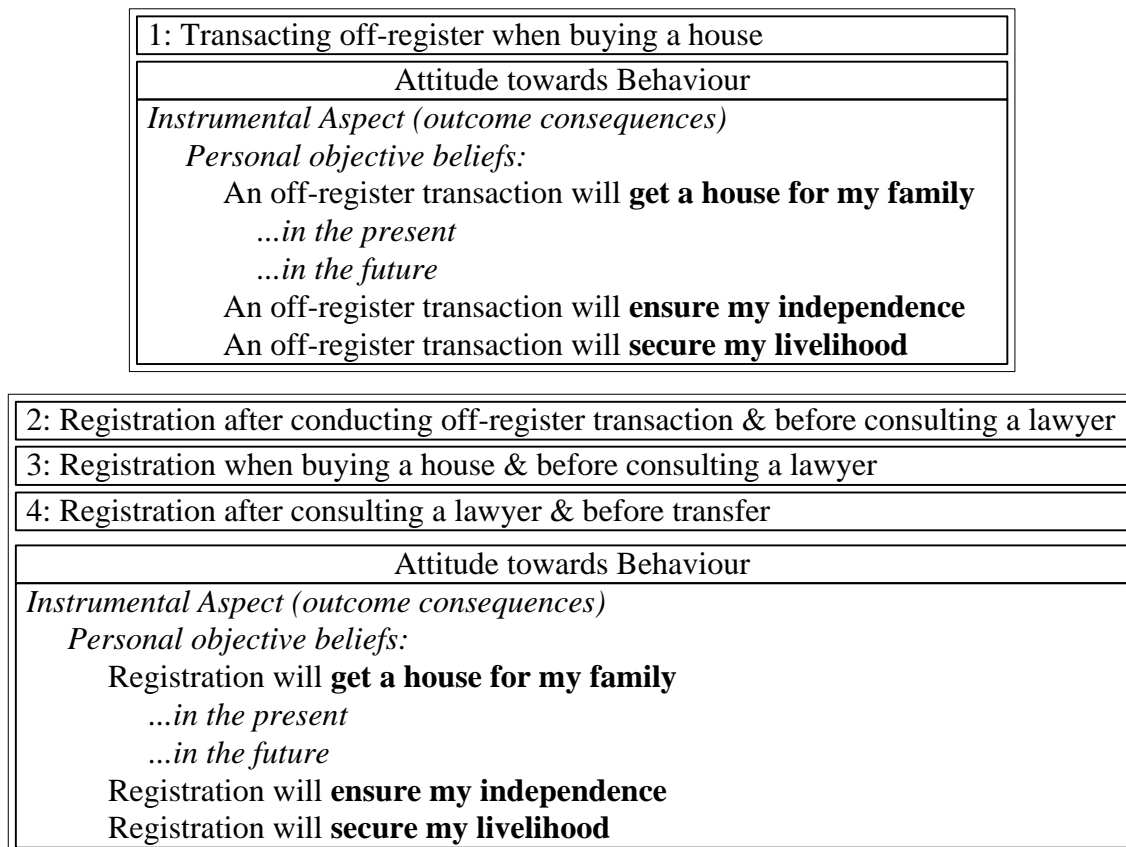
Personal and transactional objective beliefs are used in different combinations by buyers in the evaluation of transaction-securing behaviours. In addition, both personal and transactional objective beliefs may be transferred by a buyer from one transaction-securing behaviour to another. For example, a buyer may believe that an off-register transaction will secure ownership. But when the off-register transaction is subsequently threatened (a control belief – refer to section 7.5.2.2(a) and (b)), the buyer may start believing that registration will secure ownership. This illustrates why the instrumental aspect of the different behaviours are similar, because buyers' personal or transaction objectives remain the same even though they may associate these with different transaction-securing strategies at different times.

Whether or not they held them, buyers did not express beliefs about the experiential aspect of transaction-securing behaviours. Buyers did refer to their feelings of frustration, confusion or relief at the outcomes of transaction-securing behaviours, but they did not describe the

performance of the transaction-securing behaviours as, for example, difficult or easy. The study did not identify why this is so, but to speculate, in the case of off-register transactions the performance is easy and therefore not worth mentioning; whereas the omission of describing registration as difficult may indicate a pragmatic attitude towards official procedures. However, since buyers did not express experiential aspect beliefs, only the instrumental aspect of attitude towards behaviour features in this discussion.

### 7.3.1 Personal objective beliefs

Four beliefs fall into the personal objective beliefs category and these are listed in Figure 7.2 in relation to the behaviours. The same four beliefs are used in the evaluation of all four behaviours but associated with a different transaction-securing strategy.



**Figure 7.2: Personal objective beliefs components of the behavioural models**

*(a) The transaction-securing strategy will get a house for my family (present)*

The first personal objective belief is that buyers believed that the transaction-securing strategy they used would get a house for their families (022b, 023, 026, 029, 033, 034, 035a, 035b, 036, 055, 056, 056, 057, 067, 072). The buyers identified the family as the buyers themselves, children, a spouse or partner, and in some cases parents and siblings.

The belief that the transaction-securing strategy will get the buyer a house differs subtly from the transactional objective belief that a transaction-securing strategy will secure the house (refer to section 7.3.2(a)). The personal objective belief is about occupation, whereas the transactional objective belief is related to ownership.

This is better understood by considering the bafflement of the buyers when asked “Why did you decide to buy a house?”. They assumed that the reason for buying a house would be obvious, because of course they would want to improve the living conditions and the circumstances of their families. This assumption becomes clearer when considering the buyers’ housing histories. Twenty buyers used to live in the informal settlement or in backyard shacks and a further eleven shared a house with parents or siblings and their families. These personal histories as well as the historic and current lack of housing (refer to section 6.2.1) underlie the need to access a house.

The distinction needs to be made that, although a house is bought to provide housing for a family, it is not regarded as a “family house”. A family house is a house that is treated as communal property amongst the extended family and, according to a municipal official (015), obtained or created through inheritance. This practice is part of Xhosa customary land tenure (Kingwell 2008). The intent of buyers, using registered or off-register transactions, was to obtain a house for themselves (refer to section 7.3.1(c)) although, potentially, this may change once the house is inherited by the buyers’ children.

*(b) The transaction-securing strategy will get a house for my family (future)*

A second personal objective belief is securing a house for the family in the future. In terms of this belief the family is more specifically identified as the buyer's children (016, 022b, 023, 029, 034, 035, 036, 043, 072).

The belief is supported by the responses to the question, "Would you sell your house?" to which nine buyers emphatically responded that they would never sell their houses, because of their obligation to provide secure accommodation for their children in future. To quote three buyers:

"No, no, no, because for my child[ren], they won't have a place to stay" (043).

"My daughter or my daughter's son, they have to stay here. It is not easy to find [a house], it is quite difficult" (016).

"No I don't think it is a good idea, because we've got children, so when we're old and passed away, they must have a home" (034).

The concern of buyers regarding the difficulty of finding a house, must be considered in relation to their experiences and observations. Except for one couple, all the buyers had been on the municipal housing waiting list since their arrival in the town, without receiving a state-subsidised house. For example, participant 021 responded to the question of whether he applied for a subsidy by saying, "[Yes], but I haven't got a house from the [state], so I decided to buy my own." Also, Project 2001 was the last project developed by the municipality in Phumla and the planning for the next project started a full ten years later (refer to section 6.2.1). In addition, the buyers are aware of the lack of land for state-subsidised housing in the municipal area (016, 057). Furthermore, the historic lack of access to housing and uncertainty associated with housing are evident in Phumla (refer to section 6.2). All of these factors add to the buyers' concern that it will be difficult for their children to obtain housing in the future.

*(c) The transaction-securing strategy will ensure my independence*

The third personal objective belief held by buyers was that a transaction-securing strategy would ensure that their accommodation, or business premises, is not dependant upon family or

landlords. Nineteen buyers stated this belief, making it the most frequently mentioned personal objective belief.

Some buyers said that they wanted to move out of houses shared with their parents or siblings, usually because of limited living space (035, 036, 055, 063, 072, 076). This need for independence also becomes more pressing when couples marry (036, 055, 067). To quote participant 036: “[I wanted] to have a place of my own, so I can have freedom, I can have a wife, I can have a family.”

Buyers also wanted independence from landlords (020, 039, 043, 057). They spoke about problems with landlords, including being treated badly and without dignity (039), expensive rent (020), unfair rental practices and unexpected evictions (043, 057). Buyers also pointed out the advantages of owning a house are the prospect of a better and healthier environment (039, 057) and that it is cheaper than renting (020).

Another group of buyers wanted independence for business reasons (016, 018, 022, 038). Participant 016 explained the difficulty of having a business on someone else’s property. In his words, “it is not easy to run [a business in a backyard shack] or in someone’s house, [be]cause the more the business go up, . . . they get jealous of you and they tell you now there is no space; my uncle is coming from the Eastern Cape and it is going to be full outside” and “the more you want to go forward, the more [the landlord tramples] you down”.

*(d) The transaction-securing strategy will secure my livelihood*

The fourth personal objective belief is related to livelihood activities. As mentioned above, another reason to buy a house is to secure a business. Participants 016 and 018 were running shops, and participant 038 a hairdressing salon, from backyard shacks, but wanted to expand their businesses by buying houses. Participant 022a also operated a shebeen from a backyard shack next to a house. When the owner of the property decided to sell, participant 022a had to buy the house to secure the premises. A variation is when houses are bought as part of a rental

business; for example participant 070 is a small scale landlord who bought two houses to let to tenants and who continues to search for other houses for this purpose.

### ***7.3.2 Transactional objective beliefs***

Transactional objective beliefs about the type of tenure security, evidence of the transactions and external securing parties are used in the evaluation of all four behaviours (see Figure 7.3). The three beliefs are also interdependent, because the beliefs about tenure security are linked to those about evidence and external securing parties. Other transactional objective beliefs associated with evaluation of registration include: changing the registered ownership; ensuring a legal and reliable process; and gaining ownership independence from the seller and state.

There are links amongst all the constructs in the transactional environment (see Figure 4.5), but there is a particular association between transactional objective beliefs and control beliefs in the evaluation of the registration behaviours (refer to section 7.5.2). The transactional objective beliefs about changing the registered ownership; ensuring a legal and reliable process; and gaining ownership independence from the seller, are closely linked to the fear that the seller might attempt, or actually threaten, to reclaim the house (control beliefs - refer to sections 7.5.2.2(a) and (b)).

Transactional objective beliefs also serve another purpose. Although it is argued in section 7.5.1.3 that it is difficult to determine the type and depth of information buyers had about transaction-securing strategies, the buyer's transactional objective beliefs provide an indication of the buyers' knowledge of the different transaction-securing strategies.

1: Transacting off-register when buying a house
Attitude towards Behaviour
<i>Instrumental Aspect (outcome consequences)</i> <i>Transactional objective beliefs:</i> An off-register transaction will <b>secure the house in the interim</b> An off-register transaction will <b>secure the house permanently</b> An off-register transaction will provide... ... <b>intangible evidence</b> <i>Oral agreement</i> <i>Witnesses</i> <i>Promise to register (Interim off-register)</i> ... <b>tangible evidence</b> <i>Affidavit</i> <i>Transaction related documents</i> <i>Case book (Interim off-register)</i> <i>Legal contract (Interim off-register)</i> The <b>family</b> supports the transaction The <b>community court</b> supports the transaction The <b>lawyer</b> supports the transaction (legal contract)

2: Registration after conducting off-register transaction & before consulting a lawyer
Attitude towards Behaviour
<i>Instrumental Aspect (outcome consequences)</i> <i>Transactional objective beliefs:</i> Registration will <b>secure the house permanently</b> Registration will provide <b>legal evidence (Title Deed)</b> Registration will <b>change the house into my name</b>

3: Registration when buying a house & before consulting a lawyer
4: Registration after consulting a lawyer & before transfer
Attitude towards Behaviour
<i>Instrumental Aspect (outcome consequences)</i> <i>Transactional objective beliefs:</i> Registration will... { <ul style="list-style-type: none"> <li><b>secure the house permanently (information)</b></li> <li><b>secure the house permanently (past experience)</b></li> <li><b>provide legal evidence (Title deed)</b></li> <li><b>change the title deed into my name</b></li> <li><b>ensure it is a legal transaction</b></li> <li><b>ensure a reliable process</b></li> <li><b>ensure ownership independence from seller</b></li> <li><b>ensure ownership independence from government</b></li> </ul>

Figure 7.3: Transactional objective beliefs components of the behavioural models



*(a) Tenure security*

Buyers may believe that off-register or registered transactions will give them permanent tenure security. They may also believe that an off-register transaction will provide temporary security until they can register a transaction.

Bearing in mind that the behaviour “transacting off-register when buying a house” includes off-register and interim off-register transactions, four buyers initially used off-register transaction strategies and did not plan to use any other transaction-securing strategy (029, 035a, 064, 073). They believed that the off-register transaction would achieve permanent tenure security. On the other hand, the buyers who used interim off-register transactions (refer to section 6.5.1) believed that an off-register transaction would support interim tenure security until they could register the transaction (020, 022a, 034, 039, 054b, 067, 076) (see Figure 7.3).

When buyers, subsequent to an off-register transaction, decided to evaluate registration, they changed their beliefs about tenure security. They then adopted the belief that registration, and not the off-register transaction, would provide permanent tenure security (020, 022a, 029, 034, 039, 054b, 063, 064, 067, 073, 076).

Buyers who evaluated registration without first attempting an off-register transaction also believed that registration would secure the house permanently. This belief is based on information gathered from neighbours, friends, family and the municipality (021, 023, 036, 038, 057, 066), but also the buyers’ personal experiences (022b, 035, 070) and observations of transactions conducted by others (016, 043, 054a, 056, 070).

With respect to personal experience, participant 035 bought a house in Project 2001, using an off-register transaction, and the seller later reclaimed the house. Participant 070 bought a house in Cape Town using an off-register transaction and this house was also reclaimed by the seller. Both participants registered the houses they subsequently bought in Project 2001, as participant 070 stated “I was very scared with the deals, based on experience.” Because of these personal experiences, both participants strongly believed that registration would provide permanent

security. Therefore, the strength of a buyer's belief about security may depend on the source of the belief, that is, information or experience.

*(b) Evidence and external securing parties*

Buyers believed that the transaction-securing strategies would give them evidence of the transaction and/or the support of an external securing party. The type of evidence and external securing parties varied according to the transaction-securing strategy. For example, an affidavit was used in an off-register transaction, whereas title deeds were associated with registration (refer to sections 6.5.3 to 6.5.5).

Thirteen buyers believed that the off-register transaction would provide evidence of the transaction in support of tenure security (020, 022a, 029, 034, 035a, 039, 054b, 063, 064, 067, 072, 073, 076). The evidence may be in tangible form, such as transaction-supporting documents, the case book of the community court and legal contracts; or intangible, such as oral agreements, witnesses and a promise to register (refer to section 6.5.3).

Off-register buyers who subsequently evaluated registration wanted the title deed. They believed that registration would provide legal evidence of the transaction in the form of the title deed (029, 034, 039, 063, 067, 072, 076). The same belief was shared by buyers who evaluated registration without conducting an off-register transaction first (016, 021, 022, 026, 033, 037, 038, 043; 054a, 056, 066, 070).

In addition to evidence, off-register buyers believed that the support of external securing parties, such as family and the community court, would secure a transaction (063, 067, 072, 076). A lawyer may also fulfil this role; for example one buyer consulted a lawyer and signed a legal contract with the seller agreeing to register the transaction once the title deed became available (076). She believed that the lawyer would assist her in the event of a dispute, therefore lawyers are included under transactional objective beliefs associated with "transacting off-register when buying a house".

The evidence and external securing parties used in the off-register strategy do not disappear when evaluating “registration after conducting an off-register transaction and before consulting a lawyer”. Rather, these are re-categorised as perceived behavioural controls, because of the buyers’ belief that the evidence and external securing parties used in the off-register transaction will facilitate registration (refer to section 7.5.2.1(a)).

Buyers who evaluated behaviours involving registration did not identify an external securing party.

*(c) Other transactional objective beliefs associated with registration*

Buyers also believed that registration would change the name of the recorded owner of the houses into their names; ensure a legal and reliable process; and that they would gain ownership independence from the seller and state.

Two buyers who evaluated registration after conducting an off-register transaction believed that registration would change the name on the title deed to their respective names (064, 076). This belief was also shared by buyers who evaluated registration without conducting an off-register transaction (018, 023, 035, 038, 066). For example, participant 023 went to the lawyers “for changing the title deed”.

In addition, buyers believed that registration stops the seller from having any say in the house (021, 033). This is also supported by statements such as, registration or the title deed means “the house is mine” (023, 036, 054a, 076) and “the house belongs to me” (023, 024, 026, 031), therefore the seller had no claim. Participants also wanted to conduct a legal transaction (021, 022b, 033, 043) and ensure a reliable process (021, 057). As discussed in the introduction of this section, these beliefs were linked to fears about sellers reclaiming houses sold off-register (control beliefs - refer to sections 7.5.2.2(a) and (b)).

For one foreign buyer it was also important that the government has no say in his home ownership (033). This belief is linked to the identity of the buyer, a control belief discussed in section 7.5.2.1(b).

When buyers evaluate “registration after consulting a lawyer and before transfer” they retain the beliefs they held when evaluating “registration after conducting an off-register transaction and before consulting a lawyer” and “registration when buying a house and before consulting a lawyer” (see Figure 7.3).

#### **7.4 Perceived subjective norm**

The perceived subjective norm includes beliefs about whether other people, whose opinions are important to the buyer, approve or disapprove of a behaviour (injunctive norm) and also, if others perform or do not perform the behaviour (descriptive norm).

Normative beliefs are also translated from one behaviour to another. For example, a buyer forms a normative belief that her neighbours, friends and family approve of registration when she evaluates “registration when buying a house and before consulting a lawyer”. When she subsequently evaluates “registration after consulting a lawyer and before transfer”, the normative belief does not disappear, but is used in the new evaluation. Therefore, “registration after consulting a lawyer and before transfer” includes all the normative beliefs of previous behaviours, excluding those that promoted off-register transactions.

Community leaders reported that they provided advice to potential buyers (017, 053). However, none of the buyers interviewed in Project 2001 referred to community leaders, excluding the members of the community court, as a source of information.

1: Transacting off-register when buying a house
Perceived Subjective Norm
<i>Injunctive norms (what others think)</i> <b>Seller</b> recommends off-register transaction <b>Community court</b> recommends an off-register transaction followed by registration
<i>Descriptive norms (how others behave)</i> <b>Neighbours, friends &amp; family</b> conducted off-register transactions that failed

2: Registration after conducting off-register transaction & before consulting a lawyer
Perceived Subjective Norm
<i>Injunctive norms (what others think)</i> <b>Neighbours, friends &amp; family</b> <b>Community court</b> <b>Municipality</b> } ... recommend registration and warn against off-register transactions <b>Lawyers</b> recommend registration when consulted

3: Registration when buying a house & before consulting a lawyer
Perceived Subjective Norm
<i>Injunctive norms (what others think)</i> <b>Neighbours, friends &amp; family</b> <b>Municipality</b> <b>Employers</b> } ... recommend registration and warn against off-register transactions <b>Seller</b> recommends (registration/off-register transaction)
<i>Descriptive norms (how others behave)</i> <b>Neighbours, friends &amp; family</b> use registration

4: Registration after consulting a lawyer & before transfer
Perceived Subjective Norm
<i>Injunctive norms (what others think)</i> <b>Neighbours, friends &amp; family</b> <b>Community court</b> <b>Municipality</b> <b>Employers</b> } ... recommend registration and warn against off-register transactions <b>Seller</b> recommends registration <b>Lawyers</b> recommend registration
<i>Descriptive norms (how others behave)</i> <b>Neighbours, friends &amp; family</b> use registration

**Figure 7.4: Perceived subjective norm constructs of the behavioural models**

#### ***7.4.1 Neighbours, friends and family***

From the findings in the case study, it is clear that neighbours, friends and family are the main information sources used by residents. Therefore neighbours, friends and family have a significant impact on buyers' normative beliefs, in particular, the injunctive normative beliefs (see Figure 7.4).

Buyers who conducted off-register transactions stated that neighbours, friends and family did not recommend off-register transactions. In fact, most of the advice given by these sources, concerns the risks of transacting off-register (029, 034, 064, 076). However, it can be inferred that neighbours, friends and family did promote off-register transactions in the early years of Project 2001 (refer to section 7.9.1). This is supported by the similarities in the buyers' transaction-securing strategies, for example the use of affidavits. These similarities indicate that buyers did base their actions on shared information. However, because the participants did not speak about neighbours, friends and family supporting off-register transactions, it is excluded from Figure 7.4.

Instead, buyers noted that their neighbours, friends and family recommended registration (021, 023, 036, 043, 056, 066). Other buyers were advised to register by their neighbours, friends and family, but had to use an interim off-register transaction because, either the project transfer was not completed and the seller did not have a title deed, or there was a problem with the title deed (034, 076) (refer to section 7.5.2.6(b)). This situation illustrates how a normative belief can be superseded by a control belief, in this case, an actual control belief.

Buyers also knew neighbours, friends or family who conducted off-register transactions that failed to secure the houses (016, 034, 043, 054a, 056, 070). Therefore, this descriptive normative belief leads to a negative evaluation of "transacting off-register when buying a house". For example, both participants 034 and 056 observed that neighbouring properties sold off-register were reclaimed by the sellers. As a result, participants 056 decided to use registration and participant 034 intended to register once the title deed is issued to the seller. Finally, one participant who held a positive intention towards registration observed that friends, family and

neighbours conduct registered transactions (043). These beliefs are categorised as part of the descriptive norms, since they are normative beliefs about how others behave.

#### **7.4.2 Seller**

A seller may recommend a transaction-securing strategy and the impact of this advice is mediated by associated control factors.

A seller may advise using an off-register (064) or registered (057) transaction and the buyer may follow this suggestion without protest. For example, participant 064 agreed to an off-register transaction when the seller suggested it, because both the seller and the buyer were under the impression that an affidavit would secure the transaction.

However, it may happen that a seller may attempt to convince the buyer to use an off-register transaction because it is to the seller's benefit. For example, one participant spoke of a house in his street which was sold off-register and reclaimed by the seller and sold again (056). This was probably a result of discovering that it is possible to make money using this process and, by employing intimidation and capitalising on the fact that the title deed remains in the seller's name, to defraud the buyers.

Another example is that of participant 070. The sellers tried to convince him to use an off-register transaction, arguing against spending money on transfer costs and pointing to their shared ethnic identity as a basis for mutual trust (a control factor, refer to section 7.5.2.1(b)). Nevertheless, participant 070 insisted on going to the lawyer because of past experiences with off-register transactions and reclaims. At the lawyer's, it was found that the sellers had bought the house using an off-register transaction, because the title deed was still in the previous owner's name. To register the transaction, the previous owner had to be involved, so the lawyer contacted him and it was discovered that the sellers still owed money on the off-register transaction. Therefore, it is likely that the sellers tried to persuade participant 070 to conduct an off-register sale because they wanted to keep these matters hidden.

The seller's impact on the buyer's normative beliefs also depends on the associated control factors. Participant 070 believed that the seller might reclaim the house, (a control belief; refer to sections 7.5.2.2. (a) and (b)), and refused to conduct an off-register transaction. However, control factors introduced by the seller (for example the seller wants to leave Phumla urgently; refer to section 7.5.2.2(d)) may convince the buyer to use an off-register transaction because it can be done quickly. In addition, the response of the buyer towards the normative pressure from the seller needs to be considered in relation to the pressure on housing in Project 2001. The buyer may feel that there is no other option to get a house but to follow the advice of the seller. This is discussed further in section 8.2.

#### ***7.4.3 Community court***

Although the community court recommends registration as part of their procedures, they initially employ an off-register transaction process (refer to section 6.5.4). Thus the community court influences the normative beliefs associated with "transacting off-register when buying a house". The community court also appears as part of the normative beliefs in the evaluation of "registration after conducting an off-register transaction and before consulting a lawyer", because the court also advises buyers to consult a lawyer. Both buyers 063 and 072 used these normative beliefs in their evaluations of transaction-securing behaviours.

#### ***7.4.4 Municipality***

The municipality's recommendation for the use of lawyers in sales (022a, 034, 043, 056) is classified as a normative belief and is used in the evaluations of all four behaviours.

Note that even though a buyer believes that the municipality supports registration, it will not necessarily result in a negative evaluation of off-register transactions. For example, participant 022a was advised by the municipality to register the transaction, but decided to conduct an interim off-register transaction due to the urgency of the sale (a control factor, refer to section 7.5.2.2(d)). Participant 022a believed that the transaction, an oral agreement, would be secure because the seller was like family (a control factor, refer to section 7.5.2.1(b)).



#### ***7.4.5 Employers***

Employers also affect normative beliefs when they are involved in transactions and are included as a factor the evaluation of “registration when buying a house and before consulting a lawyer”. In some cases, the buyer is assisted by the employer (016, 054a, 055) while, in others, the employer assumes full responsibility for the purchase (024, 031, 032, 037, 071). The normative belief that the employer recommends registration, is thus linked to the capacity belief that the employer will assist with registration (refer to section 7.5.1.4). It may also be related to another control factor, that is, the employer may insist that the financial support is dependent upon registration (refer to section 7.5.2.5(a)). Therefore, in transactions involving employers, the control beliefs may play a more significant role than the normative belief.

#### ***7.4.6 Lawyers***

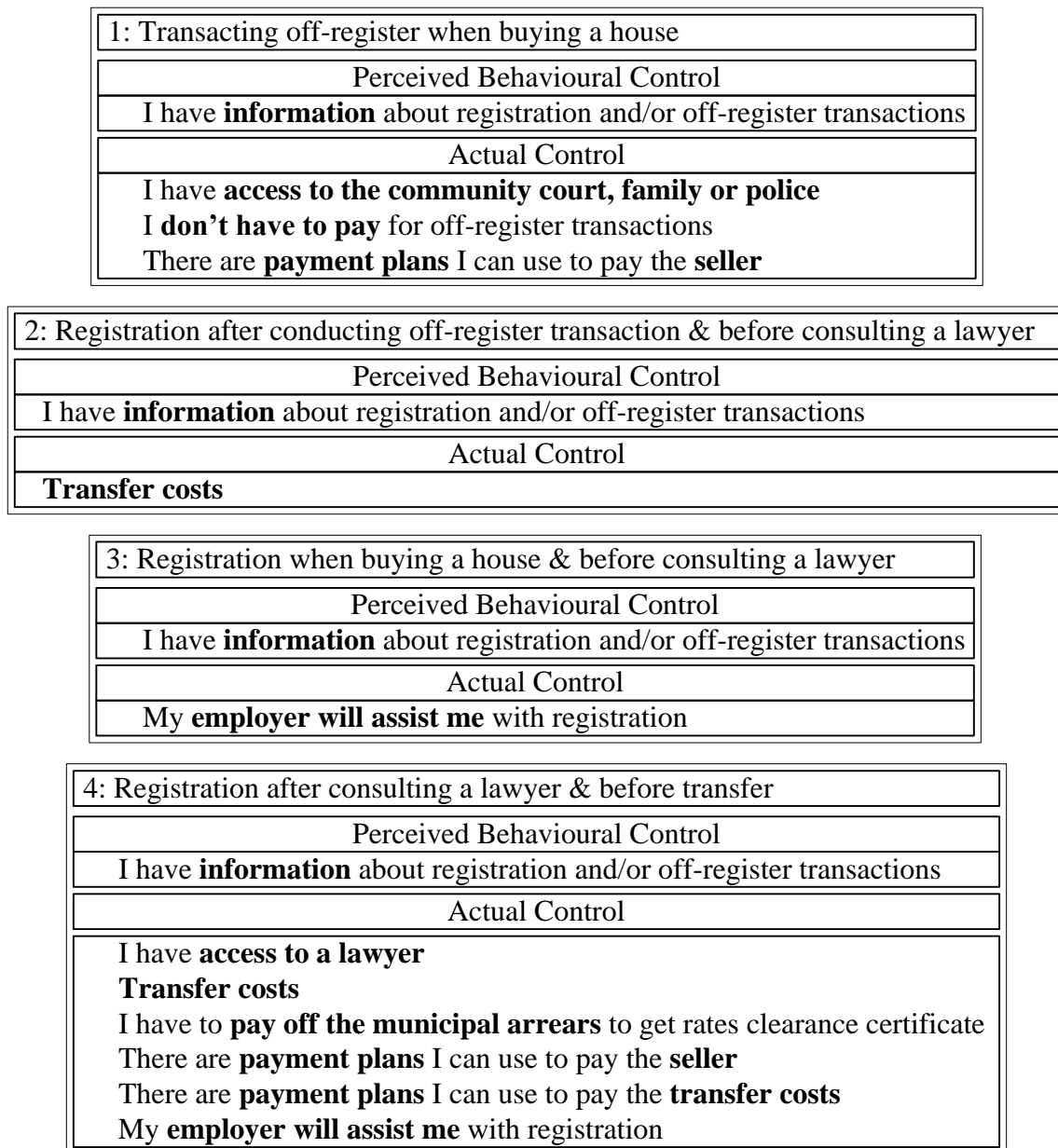
Lawyers, once consulted, obviously recommend registration and mainly affected the normative beliefs in the evaluation of “registration after consulting a lawyer and before transfer”. However, if a buyer consults a lawyer, it does not necessarily mean that registration is completed. For example, as mentioned in section 6.5.5, participants 023 and 035b seemed to be satisfied with the Deed of Sale as adequate proof of ownership and did not appear to be concerned about completing registration.

### **7.5 Perceived behavioural controls and actual controls**

Behavioural controls are perceived or actual factors that a buyer believes control the performance of a behaviour (refer to section 4.2.6). The perceived and actual control factors are further sub-divided into those associated, respectively, with capacity or autonomy.

#### ***7.5.1 Capacity***

Capacity consists of the beliefs that a buyer holds about his or her capability of performing a transaction-securing strategy and involves opportunities, resources and information. Capacity beliefs amongst the Project 2001 buyers included beliefs about access to an external securing party, financial costs, payment plans, information and assistance from an employer.



**Figure 7.5: Capacity aspects components of the behavioural models**

7.5.1.1 Access to external securing party

To conduct a transaction-securing strategy, the buyer might need to access an external securing party. As discussed in section 6.5.3 the external securing parties that assist a buyer to secure transactions in Project 2001 include the family of the buyer or seller, the police, the community court and the lawyer(s) retained (see Figure 7.5).

None of the buyers spoke about problems with access to these external securing parties. However, three related issues arise in this regard. First, access to the police as external securing party may be changing, as police may refuse to affirm affidavits for house sales (refer to section 6.5.4). Second, the community court said that anyone in Phumla can approach them to conduct a transaction (051, 074). However, foreigners are not members of the community court, Neighbourhood Watch or Community Police Forum (refer to section 6.5.4) and it is uncertain if the community court would assist them or if foreign buyers would trust the community court. Third, lawyers are accessible. In terms of physical proximity, there are at least ten lawyer's firms located less than five kilometres from Phumla. Also, all participants who wanted access to lawyers did obtain a consultation. However, in three cases, the lawyer required that the client obtain the money required for transfer before initiating registration, this may be interpreted as qualified access, and is discussed further in section 7.5.2.4(b) as one of the control beliefs.

#### 7.5.1.2 Financial costs

The buyers in Project 2001 did not identify any financial transaction costs as part of off-register transactions, excluding the purchase price. Registration on the other hand, involves three main costs: the transfer cost, the municipal arrears and the purchase price.

With off-register transactions there are no apparent financial transaction costs. This is an actual control factor in the evaluation of "transacting off-register when buying a house" (refer to Figure 7.5). For example, participant 022a decided to delay registration partly because he did not have the money to pay a lawyer. Instead he conducted an off-register transaction because it was free of charge.

To register a transaction, the buyer needs to pay the transfer costs (refer to section 2.2.2). In Project 2001, transfer costs add a large percentage to the cost of purchasing a house. Using the example in Table 2.1, the transfer costs were R2,700 for a house sold for R20,000 in 2006. Therefore the transfer costs adds 13,5% to the purchase price. Despite this large percentage, participants who bought houses before the change in tariffs in 2009 did not speak about transfer costs as expensive. There are four possible explanations for this omission. Firstly, the buyers,

especially those who still had to consult a lawyer, were not aware how much the transfer would cost. Secondly, the burden of the transfer costs was eased because of the payment plans introduced by lawyers. Thirdly, the transfer costs were much less than other expenses, such as paying the seller's municipal arrears. Fourthly, the buyers may view transfer costs as inevitable. For example, participant 072 bought a house for R10,000 and signed a Deed of Sale with the seller. At the time of the interview he was busy paying off the seller's R6,000 municipal arrears to obtain the rates clearance certificate for registration (a control factor – refer to section 7.5.2.6(c)). Participant 072 did not know how much the lawyer would charge him for transfer costs once registration could occur. When he was asked if he would pay R10,000 for transfer costs he said “As long as I get the house” and when asked the same question but with an amount of R20,000 he responded, “Life! What can I say? You give something to get something”.

As discussed in section 2.2.2, the recommended tariff for the conveyancer's fee changed in 2009. If the same R20,000 transaction mentioned above was conducted in 2009 the minimum transfer cost would be R4,700 (23,5%). Only one participant consulted a lawyer after the tariff change and she regarded the transfer costs as expensive (039). Because there is only one case, it is not possible to determine the effect of the tariff change on the decision to register. Also, when participant 039 was first interviewed she had yet to consult the lawyer and did not mention the transfer costs. In the second interview, after participant 039 consulted the lawyer, she remarked that transfer costs were expensive. Thus transfer costs were classified as an actual control factor in the evaluation of “registration after consulting a lawyer and before transfer” (see Figure 7.5).

Transfer cost may also be considered in the evaluation of “registration after conducting an off-register transaction and before consulting a lawyer”. Participant 072 used the community court process and started registration when temporary free legal services were offered in the neighbourhood. For participant 072, the waiver of transfer costs did facilitate registration, therefore it was an actual control factor (see Figure 7.5).

Alternatively, the transfer cost burden may be alleviated by the payments strategies introduced by the lawyers which act as a control factor in the evaluation of “registration after consulting a

lawyer and before transfer” (refer to section 6.5.4). After signing a Deed of Sale, lawyers may permit buyers to make payments into the lawyers’ trust account until there is enough money to cover transfer costs (035b, 043). The lawyer may also suggest that the seller lower the purchase price to take the transfer costs into account (152). Both of these strategies assist the buyer in managing transfer costs. However, the former strategy introduces delays into the completion of the registration process. The effect of this delay is discussed in sections 7.5.2.4(b) and 7.9.2.

A much greater expense, as compared to the transfer costs, may be the payment of municipal arrears to obtain the rates clearance certificate (refer to section 7.5.2.6 (c)). Although the municipal arrears can be regarded as a component of transfer costs, buyers view it as a separate cost. Therefore, the capacity construct in the evaluation of “registration after consulting a lawyer and before transfer” includes two cost-related capacity factors; transfer costs and the municipal arrears.

Eight buyers who attempted registration reported that they assumed responsibility for the sellers’ municipal arrears, which ranged from R865 to R18,000. Two other buyers negotiated a reduction in the purchase price equivalent to the municipal arrears (016, 043). For example, participant 016 learned that the house is worth R20,000, but also that the seller owed R10,000 on his municipal account. The buyer and seller negotiated a purchase price, lowered by the amount owing, to R10,000, with participant 016 assuming responsibility for the municipal arrears. Lawyers reported that their clients used both these practices (075, 152).

In one case, an off-register buyer negotiated a reduced purchase price (063). Other buyers who conducted off-registrar transactions usually found out about the seller’s municipal arrears subsequent to the transaction (020, 029, 034, 067, 072). However, the municipal arrears did not affect the evaluation of off-register transactions, since the performance of the transaction-securing strategies did not depend upon the payment of the municipal arrears.

Table 7.2 shows a cost breakdown for participants who provided information about purchase price, municipal arrears and transfer costs; they had either completed registration or were in the

process of registering. “LA” indicates that the participant showed the researcher the lawyer’s account for costs. In the other cases the sales price was obtained from the title deed. In the following table, participant 043’s transfer costs reflect only the costs of preparing the Deed of Sale.

The table shows that six participants had to spend more or the equivalent of the transfer costs on the municipal arrears.

Participant	Purchase price (R)	Municipal arrears (R)	Transfer costs (R)	Total (R)	Sales price on Title deed (R)
016	10,000	10,000	2,300	22,300	LA
022	18,000	865	3,135	22,000	18,250
033	18,500	3,000	3,000	24,500	18,500
043	13,000	7,000	570	20,570	LA
056	15,000	2,800	2,000	19,800	LA
057	19,000	3,000	3,000	25,000	22,000
070	25,000	3,000	2,500	30,500	25,000

**Table 7.2: Purchase price, municipal arrears and transfer costs compared**

The third financial expense that, generally, affects the capacity of the buyer is the purchase price. The purchase price is often paid in one cash amount (refer to section 6.5.2), unless the seller agrees to a payment plan. Payment plans are used as part of both off-register and registered transactions. The payment plan affects capacity, since it gives the buyer the opportunity to complete a transaction-securing strategy successfully. The payment plans serve as actual control factors in the behaviour evaluations of “transacting off-register when buying a house” and “registration after consulting a lawyer and before transfer” (see Figure 7.5).

For example, in six of the thirteen off-register transactions analysed, the seller and buyer agreed on a flexible payment plan (029b, 034, 039, 064, 067, 073). These payment plans were largely flexible because buyer and seller did not always specify payment dates, the number of payments or the size of the payments.

Three buyers who registered transactions also made long-term payment arrangements with sellers. Participant 022b took two years to pay the seller. Two participants were still making payments at the time of the interviews; participant 016 had been paying the seller for three years and participant 043 for five years. In all three cases, the participants signed Deeds of Sale, and the transfer was delayed until the buyer was paid in full. These payment plans were negotiated with the assistance of a lawyer.

These payment plans are similar to housing-related credit available from banks. A municipal official was aware of two or three individuals that received bank loans (015). But, according to the transfer records (2001-2010), there is only one mortgage bond registered against a Project 2001 property. This mortgage bond was probably used to extend the house and not buy it, since the owner is still the state-subsidy beneficiary. It is possible that the other bank loans mentioned by the municipal official were personal loans and not registered against the properties. For example, one bank does not provide mortgage bonds for less than R100,000 and suggest that an individual obtain a personal loan for lesser amounts (247a). Two other banks do not necessarily have a minimum amount, but they also recommend that owners of low-cost housing access personal loans (247b, 247c). All three use the income of the applicant as an important criterion for qualification.

The other reasons that may explain why there is only one mortgage bond recorded in the records are, either that buyers did not qualify, or did not want to assume the risks associated with a mortgage bond. For example, participant 031 approached the bank, but did not qualify for a mortgage bond because she was not permanently employed. And as participant 016, a shop owner, explained, “the bank doesn’t need someone who doesn’t have money . . . it is better to struggle yourself or maybe [ask] your friends”. Participant 036, who is permanently employed, described the risks: “[if] I can’t pay the bank back, they are going to take my house and they put my children on the street, you understand, so that is not the way I would do it”.

All three capacity factors associated with costs may be linked to autonomy factors; that is, the seller insists on payment of the purchase price before performing the transaction-securing

strategy (refer to section 7.5.2.2(c)) the transfer process is conditional upon payment of the transfers costs (refer to section 7.5.2.4(b)) and the municipal arrears must be paid to obtain the rates clearance certificate (refer to section 7.5.2.6(c)).

### 7.5.1.3 Information

Information as a capacity factor is strongly related to the attitudinal, normative and control beliefs held by the buyer. Buyers obtained information about both off-register transactions and registration from others (e.g. neighbours, friends and family, sellers, the community court, municipality, employers and lawyers), but also through personal experience.

It is difficult to determine what information participants had at various stages, even after they completed registration. This is because of the number of years between the transaction-securing strategies and the interviews, which makes it difficult for participants to be specific. Because of this uncertainty, information is treated as a perceived behavioural control in the evaluation of the four behaviours (see Figure 7.5).

In interviews, buyers spoke exclusively about the negative consequences of off-register transactions (021, 023, 029, 034, 043, 056, 066, 076). Two buyers personally experienced these negative consequences (035a, 070). Buyers did not mention that neighbours, friends or family advised them on how to conduct off-register transactions, or that off-register transactions may hold benefits, i.e. that off-register transactions are comparatively quicker than registration. As argued in section 7.4.1, the consistency in the off-register transactions indicates that buyers did obtain information about how to conduct off-register transactions. Furthermore, buyers did receive information about off-register transactions from sellers (029, 070). Therefore information is included as a perceived control belief in the evaluation of “transacting off-register when buying a house” (see Figure 7.5).

As mentioned in section 7.4.4., one buyer did receive information about registration from the municipality before deciding to conduct an interim off-register transaction (022a). This decision



was motivated by the seller's urgent departure (refer to section 7.5.2.2(d)) and the buyer's relationship with the seller (refer to section 7.5.2.1(b)).

All of the participants spoke about registration, although the degree of sophistication of such information reflected a wide range of understanding. For example seven participants knew that they had to consult a lawyer to get a title deed (021, 023, 043, 056, 064, 066, 076). Whereas participant 066 stated, "then the process is done, because the house is on my name from . . . the twenty-seventh of February this year, from the Deeds Office, but so far I'm still waiting for the title deed. It is not yet here." This participant demonstrated an accurate understanding of the registration process and noted that the actual change in ownership occurs at the Deeds Office.

#### 7.5.1.4 Assistance from employer

A buyer's capacity is increased if he is assisted by his employer to register a transaction. This is introduced as an actual control belief in the evaluation of the behaviours "registration when buying a house and before consulting a lawyer" and "registration after consulting a lawyer and before transfer".

Buyers involved in employer-assisted transactions reported that they were helped by their employers in retaining a lawyer and that the employers also assisted them up to the point when the Deed of Sale was signed (016, 054a). However, the buyers themselves assumed full responsibility for the rest of the registration process. For example, when the lawyers contacted participant 054a to inform her that transfer can occur because the pre-emptive sale clause had expired, she herself asked the lawyers to delay transfer to give her the opportunity to pay her municipal arrears, so that she can obtain the municipal rates clearance certificate.

In employer-controlled transactions, the employer also assisted in retaining a lawyer, but in addition, directed the entire registration process with the participation of the buyer (024, 032, 055, 071). As participant 071 explained, "I find the house and then I tell [my employers], then they come and talk [to] the owner of the house" and then, "[my employers] take that whole thing to the lawyers, so that everything can be alright."

In all the cases, the assistance by the employer increased the buyers' capacity to perform the registration behaviours, even though these transactions demonstrated varying degrees of employer involvement. The assistance by the employer may also be linked to the control belief that the financing provided by the employer is conditional upon registration (refer to section 7.5.2.5(a)).

### **7.5.2 *Autonomy***

The autonomy aspect of the perceived and actual behavioural control constructs includes factors which either facilitates or interferes with the performance of a behaviour. In this section the autonomy factors are arranged according to the directly associated loci of power or regulatory structures (see Figure 7.6). This serves to establish links between the control factors and the loci of power and regulatory structures discussed in section 7.7. Actual controls are identified using the two guidelines identified in section 4.2.6; that, is a belief is an actual control if the perceived control belief is supported by subsequent experience; or the buyer encountered a control factor while attempting to perform the behaviour.

The discussion of the transactional environment (refer to section 7.7) identifies the community court and its procedures; the family; the state; and the municipal policies and bylaws as loci of power or regulatory structures. However these loci of power and regulatory structures are not directly linked to autonomy factors as argued below.

Both the community court and the family feature in this discussion, though they appear as part of buyer- and seller-associated autonomy factors. There may be autonomy factors directly linked to the community court and its procedures, but these were not identified in the fieldwork. Also, the analysis demonstrates that the family is an extension of the buyer and seller. For example, a buyer's belief in the security of a transaction is supported because is supported by the solidarity she enjoys through her family affiliation (refer to section 7.5.2.1(b)). Another example is an attempted reclaim by the family of a buyer (refer to section 7.5.2.2(a) and (b)), where the family claims the house, because they are related to the buyer.

	<i>Section</i>
<b>Buyer-associated factors</b>	<b>7.5.2.1</b>
→ Evidence and external securing parties (Previous transaction-securing strategy)	<i>(a)</i>
→ Identity	<i>(b)</i>
→ Withholding purchase price	<i>(c)</i>
<b>Seller-associated factors</b>	<b>7.5.2.2</b>
→ Reclaim fear	<i>(a)</i>
→ Reclaim threat	<i>(b)</i>
→ Purchase price: Conditional payment plan	<i>(d)</i>
→ Time: An off-register transaction is quick	<i>(e)</i>
<b>Municipality-associated factors</b>	<b>7.5.2.3</b>
→ Municipal Account: Additional evidence	<i>(a)</i>
→ Eviction threat	<i>(b)</i>
<b>Lawyer-associated factors</b>	<b>7.5.2.4</b>
→ Procedural Adaptations	<i>(a)</i>
→ Payment strategies: legal costs	<i>(b)</i>
<b>Employer-associated factors</b>	<b>7.5.2.5</b>
→ Finance conditional upon registration	<i>(a)</i>
→ Registration conditional upon payment	<i>(b)</i>
<b>Legal framework-associated factors</b>	<b>7.5.2.6</b>
→ Pre-emptive sales clause	<i>(a)</i>
→ The title deed is not available	<i>(b)</i>
→ Rate clearances certificate and municipal arrears	<i>(c)</i>
→ Seller is not the legal owner	<i>(d)</i>
→ 50% shareholder	<i>(e)</i>
→ Seller disappears	<i>(f)</i>

**Figure 7.6: Diagram of autonomy factors**

The state, as power locus, is associated with the legal framework. However, the buyers are directly affected by the legal framework, not the state. Therefore, the legal framework is linked with autonomy factors in the evaluations by buyers. Conversely, the municipality is directly linked to control factors, and the municipal policies and bylaws affect the controls factors via the municipality as power locus. The one exception is the control factor introduced by the rates clearance certificate (refer to section 7.5.2.6(c)) which is linked to the municipality (and municipal bylaws and policies) through the legal framework regulatory structure.

### 7.5.2.1 Buyer-associated factors

Factors which buyers believe give them control over a transaction-securing behaviour can be linked to the buyer as power locus.

When evaluating registration, buyers may believe that the evidence and/or external securing parties used in a preceding off-register transaction continue to support and/or acknowledge the transaction and will facilitate registration. In the evaluation of off-register transactions, buyers may believe that, if they share an identity with the seller (e.g. family or ethnicity), the off-register transaction will be secure. Identity may also facilitate registration in the case of foreign buyers who believe that registration will protect the transaction despite their outsider identity. Another way in which the buyer might control the transaction-securing behaviour is by withholding part of the purchase price until the seller completes registration.

#### *(a) Evidence and external securing parties from a previous transaction-securing strategy*

Evidence and external securing parties from an off-register transaction are perceived behavioural control factors in the evaluation of “registration after conducting an off-register transaction and before consulting a lawyer”. As a reminder, in the evaluation of “transacting off-register when buying a house”, evidence and external securing parties are part of transactional objective beliefs (refer to section 7.3.2).

Buyers who conducted off-register transactions and subsequently decided to register the transaction believed that the evidence and/or external securing parties used in off-register transactions will assist in registration (020, 029, 034, 039, 054b, 063, 064, 067, 072, 073, 076). This includes evidence such as affidavits, transaction-related documents and legal contracts as well as oral agreements, witnesses, a promise to register, and external securing parties, such as the family and the community court (see Figure 7.7).

Evidence and external securing parties are perceived and not actual control factors, since according to lawyers (050, 075, 152) the evidence and external securing parties are seldom

useful in supporting registration. Also, from the perspective of buyers, evidence and external securing parties disappear as control factors after the consultation with the lawyer.

2: Registration after conducting off-register transaction & before consulting a lawyer
Perceived Behavioural Control
<p>I have <b>evidence</b> of the off-register transaction</p> <p><i>Affidavit</i></p> <p><i>Evidentiary documents</i></p> <p><i>Witness</i></p> <p><i>Legal contract</i></p> <p><i>Case book</i></p> <p><i>Oral agreement</i></p> <p><i>Witnesses</i></p> <p><i>Promise to register</i></p> <p><b>External securing parties</b> support the off-register transaction...</p> <p><i>Family</i></p> <p><i>Community Court</i></p>

**Figure 7.7: Beliefs about evidence and external securing parties from a previous transaction-securing strategy that form part of the autonomy aspect of the “registration after conducting an off-register transaction and before consulting a lawyer” behavioural model**

*(b) Identity*

Three types of identity may influence transaction-securing behaviours; shared ethnicity, family membership and being from another country (see Figure 7.8). Identity is used as a control factor in the evaluation of behaviours “transaction off-register when buying a house” and “registration when buying a house and before consulting a lawyer”. If the identity factor continues to secure a transaction it is an actual control, whereas identity is a perceived control if the transaction is subsequently threatened.

Two participants referred to ethnic identity while discussing off-register transactions. Participant 070 said that the sellers attempted to convince him that an off-register transaction is secure by saying that “we trust you, . . . we are Xhosas . . . so this is a deal between me and you”. Another participant referred to his off-register transaction as using a Xhosa handshake (073). In both

cases, shared ethnicity was used in an attempt to generate trust between the seller and buyer to support an off-register transaction.

1: Transacting off-register when buying a house
Perceived Behavioural Control
I can conduct an off-register transaction because the seller and I... ...are <b>family</b> ... <b>share an ethnic group</b>
Actual Control
I can conduct an off-register transaction because the seller and I are <b>family</b>

3: Registration when buying a house & before consulting a lawyer
Actual Control
Because I'm a <b>foreigner</b> , I have to register to protect the transaction

**Figure 7.8: Beliefs about identity that form part of the autonomy aspects of behavioural models**

Another form of identity that affects transaction-securing strategies is family. If the seller is a family member, or regarded as such, the buyer may feel that an off-register transaction is safe. For example, participants 067 used an off-register transaction because the title deed was not available, but they were not concerned about their tenure security, because the seller is an uncle and “the sale was discussed with the family”. For them, the transaction was still secure three years after they conducted the off-register transaction. In this case identity is an actual control factor.

In another example, the municipality advised participant 022a to register, but he decided to use an oral agreement because he knew the seller very well and “[we] are like family”. However, family relationships are not always trusted to secure transactions, e.g. both participants 034 and 066 registered transactions they conducted with family members.

In the evaluation of “registration when buying a house and before consulting a lawyer” by foreigners, identity is an actual control factor.

All the participants from other countries are first generation immigrants. Foreigners are aware of their status as outsiders and the associated uncertainty and vulnerability. Xenophobic violence against foreigners occurred in many areas across South Africa in May 2008, including Phumla (Seedorp newspaper 30/05/2008). In 2010, foreigner residents were threatened again and temporarily left Phumla (Seedorp newspaper 10/07/2010). The field work was conducted over this period and an increased police presence was noticeable in Phumla. An attack on foreign shop owners in the neighbourhood next to Phumla was also witnessed during the fieldwork.

Foreigners are treated differently to South Africans in other ways as well. Foreigners may be charged higher rents (016, 065, 070), and may also be asked higher purchase prices compared to South Africans (001, 016, 017). For example, a seller told a Congolese man that the price for an original state-subsidised house was R65,000 (017), a figure greatly out of line with the prices in Project 2001 at that time.

All three foreign participants in this study bought houses using registered transactions (018, 033, 062). Participant 018, who is originally from Nigeria married a South African woman and identifies himself using her family name. He plans on staying in Phumla, unless “they don’t want me to stay . . . if somebody don’t want you they don’t want you. That is the way it works.” Participant 033 feels the same; he settled in Phumla after fleeing Rwanda and Zimbabwe, and has refugee status in South Africa. He says “you can’t plan . . . even here, if you stay a hundred years, you[‘re] just like that, in the air”. During the xenophobic violence of 2008, both participants fled Phumla with their families and both suffered property damage. According to participant 033, the sellers also tried to break into his house.

Therefore, in the case of foreign buyers, their identity as outsiders facilitated registration, because they felt it is the only transaction-securing strategy that would secure the transactions.

*(c) Withholding purchase price*

Buyers may also withhold part of the purchase price to facilitate registration. This is a perceived and actual control in the evaluation of “registration after consulting a lawyer and before transfer” (see Figure 7.9).

As mentioned in section 6.5.2, although common, not all buyers pay the sellers in one cash payment. Participants 034 used an off-register transaction and later consulted a lawyer. However, registration was delayed because the title deed was not available, and participants 034 were still paying the seller. During the delay, they decided that they would stop the payments, and keep the outstanding amount, until transfer occurs. Participant 016, on the other hand, did sign a Deed of Sale, but he is also withholding the final amount until the seller returns from the Eastern Cape for transfer. In both cases this control factor is perceived, because although the outstanding payment is an incentive for the seller to transfer, it is not guaranteed that the seller will return.

However, the factor may be an actual control. Two other buyers have completed registration; they both signed Deeds of Sale and used the same method of withholding payment (022b, 055).

4: Registration after consulting a lawyer & before transfer
Actual Control
I will keep part of <b>the purchase price</b> to ensure the seller completes transfer
Perceived Behavioural Control
I will keep part of <b>the purchase price</b> to ensure the seller completes transfer

**Figure 7.9: Beliefs about withholding the purchase price that form part of the autonomy aspects of the “registration after consulting a lawyer and before transfer” behavioural model**



### 7.5.2.2 Seller-associated factors

The beliefs held by the buyer about the controls a seller exerts over a transaction-securing strategy are seller-associated factors. The buyer may believe that the seller can threaten the off-register transaction with a reclaim. This belief may become reality if the seller actually threatens to reclaim the house. Both these control factors facilitate registration. Sellers may also introduce conditions which become control factors. For instance, the seller may require the payment of the purchase price before conducting an off-register or registered transaction. The seller may also want to leave urgently and may, therefore, insist upon a quick transaction-securing strategy which facilitates off-register transactions.

#### *(a) Reclaim fear*

The fear that the seller might attempt to reclaim the house is a belief that is associated with all four behaviours. It is a perceived behavioural control factor, since the participants were not actually threatened by the seller. The reclaim fear is a facilitating control factor, since buyers believe that the transaction-securing strategy they are evaluating will prevent reclaims.

Eighteen of the 34 buyers spoke about the danger that a seller (or seller's family) may attempt to reclaim a house bought off-register and that the buyer will have no recourse (see Figure 7.10). Lawyers (151, 152), a municipal official (001), a land surveyor (008) and community leaders (051, 074) also spoke about the prevalence of seller reclaims in Project 2001.

Participant 029, an off-register buyer, articulates the reclaim fear: "we[']re] afraid, because we bought this house without a lawyer so maybe the owner will come one day and chase us out, so we are afraid that we [may] lose this house". Participant 076, another off-register buyer, feels the same, "because the house is still in his name . . . it will be easy for him to claim the house back, yes, and then I have no cover for that." Other off-register buyers were also concerned about reclaims (034, 054b, 063, 064, 073). Most of these off-register buyers consulted lawyers or want to consult lawyers, hoping that they can register the transactions (029, 034, 063, 064, 073).

1: Transacting off-register when buying a house
Perceived Behavioural Control
I want to get an affidavit because the <b>seller</b> might try to <b>reclaim</b> the house

2: Registration after conducting off-register transaction & before consulting a lawyer
Perceived Behavioural Control
I want to register because the <b>seller</b> might try to <b>reclaim</b> the house
I want to register because the <b>seller's family</b> might try to <b>reclaim</b> the house
Actual Control
The <b>seller is attempting to reclaim</b> the house

3: Registration when buying a house & before consulting a lawyer
Perceived Behavioural Control
A registered transaction will prevent the <b>reclaim</b> of the house by ...
... the <b>seller</b>
... the <b>seller's family</b>

4: Registration after consulting a lawyer & before transfer
Actual Control
The <b>seller is attempting to reclaim</b> the house

**Figure 7.10: Beliefs about reclaims that form part of the autonomy aspects of the behavioural models**

Participants who registered, or are in the process of registering transactions, also referred to the danger of reclaims as a motivation to register (016, 021, 022b, 033, 035b, 043, 054a, 056, 057, 066, 070, 071). For example, participant 021 said that, once you have registered and received the title deed “then you’re that owner of this house. The old owner doesn’t have any say in this house anymore.” Participant 066 explained it more directly: “because I’ve heard . . . that if you buy a house aside, without involving the lawyers . . . you can be in trouble [because the sellers] come back and claim back his house or her house, without giving you your money back and there is no proof that really, really, you bought the house.”

Buyers may also believe that an affidavit can protect them against reclaims. Participants 064, following the advice of the seller, agreed to obtain an affidavit from the police in 2003 (064). The buyers said they went to the police because they heard that people sold houses and then

afterwards returned and reclaimed the houses. They believed an affidavit would protect the transaction. None of the other buyers mentioned this belief. This is probably because beliefs changed over time as buyers realised, based on information and experience, that affidavits would not protect them against reclaims. This change in beliefs is explored further in section 7.9.

The fear of reclaims is based on information obtained from friends, family and neighbours or personal experience (refer to sections 7.5.1.3). Therefore this control factor is linked to capacity. Beliefs about reclaims are also linked to attitudinal beliefs, such as the beliefs that registration will change the registered ownership; ensure a legal and reliable process; and obtain ownership independence from the seller, and state, for the buyer (refer to section 7.3.2).

*(b) Reclaim threat*

Many buyers are fearful that the seller may attempt to reclaim a house, however, for three buyers this fear became a threat. Because the buyers were threatened by the sellers, a reclaim threat is an actual control factor in the behaviours “registration after conducting an off-register transaction and before consulting a lawyer” and “registration after consulting a lawyer and before transfer” (see Figure 7.10). This control factor facilitates the performance of registration.

Participant 054b bought a house by way of an off-register transaction, after which the seller threatened to reclaim the house. Participant 054b resisted the reclaim by insisting on being paid for the extensions he built, which the seller could not afford. The dispute is on-going. However, there are cases where the seller successfully reclaimed a house (e.g. the case of participant 035).

Reclaims, as threats, are not confined to off-register transactions, but can also affect transactions in the process of registration. For example, participant 026 signed a Deed of Sale with the seller using a lawyer, but the seller attempted to reclaim the house using the community court and the title deed. The community court did not assist the seller, and the matter remains unresolved.

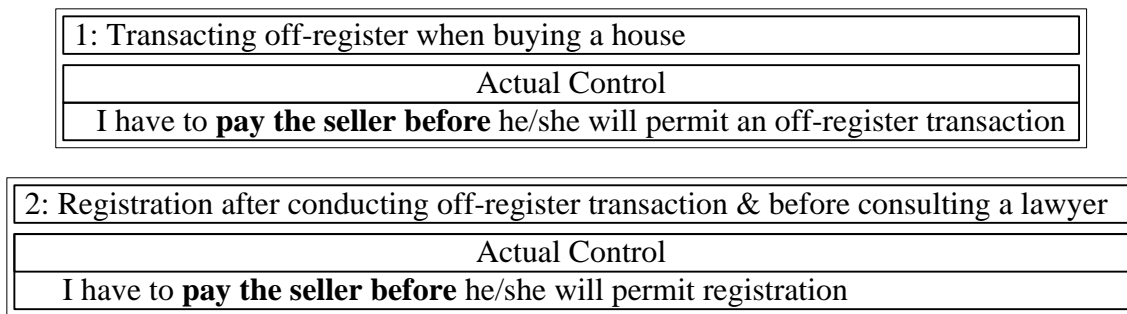
Participant 022a’s case provides another example. Participant 022a used an interim off-register transaction to buy a house. Later, when the seller and participant 022a consulted a lawyer, they found out that registration could not occur without the missing 50% shareholder (refer to section

7.5.2.6(e)). Subsequently participant 022a was threatened with a reclaim, which he resisted with the assistance of his lawyer. In both cases, registration could not be completed without the cooperation of the seller.

Reclaims are discussed further in section 7.8 as part of the analysis of transaction-securing sequences. In addition, reclaims caused changes in the transactional environment, as discussed in section 7.9.1.

*(c) Purchase price: Conditional*

The seller may insist that the purchase price is paid before the transaction-securing strategy is used. This is an interfering actual control factor associated with “transacting off-register when buying a house” and “registration after conducting an off-register transaction and before consulting a lawyer” (see Figure 7.11). This factor is linked to the pressure on housing in Phumla (refer to sections 6.2.1, 6.2.2 and 8.2). It may be argued that, if the buyer wants the house, he or she has little recourse but to follow the seller’s instructions.



**Figure 7.11: Beliefs about a conditional purchase price that form part of the autonomy aspects of the behavioural models**

The payment of the purchase price was a condition in two interim off-register transactions. In the first case, the seller insisted that the buyers pay the full purchase price before signing an affidavit (067). The seller in the other case agreed to an affidavit, but wanted the full purchase price before going to the lawyer (039). In both cases, the buyers agreed to and followed the seller’s instructions.

*(d) Time: An off-register transaction is quick*

Where a seller wishes to sell urgently, a time limitation is introduced that may result in a buyer agreeing to an off-register transaction. This factor is also linked to the pressure on housing in Project 2001 (refer to sections 6.2.1, 6.2.2 and 8.2), where, because of the extreme shortage of housing, buyers may tend to agree with the seller's requirements. Time is, thus, an actual control factor in the evaluation of "transacting off-register when buying house", because an off-register transaction is quick (see Figure 7.12).

1: Transacting off-register when buying a house
Actual Control
An off-register transaction is <b>quick (time)</b>

**Figure 7.12: Belief about time that form part of the autonomy aspect of the "transacting off-register when buying house" behavioural model**

For example, participant 029 agreed to an off-register sale because the seller had to leave Phumla urgently. Participant 022a made the same decision in similar circumstances, with the addition of a promise from the seller to return for registration.

Although these two participants believed that an off-register transaction could be concluded more quickly than registration, not all buyers share this belief. Lawyers stated that, when they are approached by buyers wishing to register transactions, the buyers often expect transfer to occur immediately (004, 050, 150, 152). In these cases lawyers may reach a compromise, by for example obtaining a Power of Attorney (refer to section 6.5.6), which reduces the time the seller is required to be present for registration. This may be one explanation why the time taken to conduct a transaction-securing strategy was not mentioned by buyers other than the two cases noted above. Two alternative explanations may be that the buyers were not concerned about how long it takes to register, or that they were prepared to wait, in return for ensuring their ownership.

### 7.5.2.3 Municipality-associated factors

Municipality-associated factors are the control factors the buyer attributes to the municipality. The buyer may believe that the municipality recognises the off-register transaction if the municipal account is in the buyer's name. The buyer may also believe, based on the perceived recognition, that the municipal account represents evidence that will facilitate registration in their name. If, on the other hand, the municipal account is in the name of the seller, the buyer feels threatened, which facilitates registration, because to change the name on the municipal account, the buyer believes the transaction must be registered. Another factor that facilitates registration is an eviction threat by the municipality.

#### *(a) Municipal account: Threat and additional evidence*

The buyers may believe that the municipal account represents a threat if it is in the name of the seller. They may also believe that the account provides additional evidence of a transaction, especially subsequent to an off-register transaction. Both control factors facilitate registration and are operative in the evaluation of “registration after conducting an off-register transaction and before consulting a lawyer” as well as “registration after consulting a lawyer and before transfer” (see Figure 7.13). The factors are classified as perceived control factors since the municipal account cannot be used to claim legal ownership or provide evidence of a transaction.

2: Registration after conducting off-register transaction & before consulting a lawyer
4: Registration after consulting a lawyer & before transfer
Perceived Behavioural Control
The municipality sends me a <b>municipal account in my name</b>
The <b>municipal account holder</b> may threaten the transaction

**Figure 7.13: Beliefs about the municipal account as threat and evidence that form part of the autonomy aspects of the behavioural models**

For example, participants 054b and 034 were concerned that the municipal account was in the name of the seller. They both conducted interim off-register transactions, but the fact that the municipal accounts were in the sellers' names, contributed to their respective decisions to register. The municipal account holder may also be someone other than the seller, for example,

participants 064's case. During the project allocation and registration process the seller was registered as the owner of another house, possibly due to an administrative mistake (refer to section 6.4). This meant that participants 064 received a municipal account in the name of someone other than the seller. This complication adds to the concern participants feels about the municipal account (refer to section 8.5 for the full case description).

Three participants who conducted off-register transactions received municipal accounts in their names; it is likely that these accounts were opened in terms of a council decision in 2004, which permitted occupiers to open accounts, if the registered owner cannot be traced (Municipal council minutes 19/10/2004)<sup>37</sup>. The three participants believed that, by virtue of the accounts opened in their respective names, the municipality recognised their claim to ownership. However, they acknowledged that registration must occur for them to become owners. Although these municipal accounts were transferred to the buyers, the accounts did not form part of the original off-register transaction. For example, the municipal account was transferred to participant 020's name, after she discussed the sale with municipal officials. Participant 020 said "every month I get the accounts, so [the municipality] knows I'm staying here and owning the house and responsible". But she acknowledged that she is not the legal owner by explaining, "if you buy a house from somebody, and you can't . . . change it unless the owner of the house is here [to go to the lawyer]". In the two other cases the buyers' lawyers assisted them in having the municipal account transferred (022, 029).

Although all three participants were receiving their own municipal accounts, the accounts of the registered owners were still being delivered to their houses. Therefore, even though the buyer felt a measure of recognition from the municipality, their concern over the sellers' municipal accounts continued.

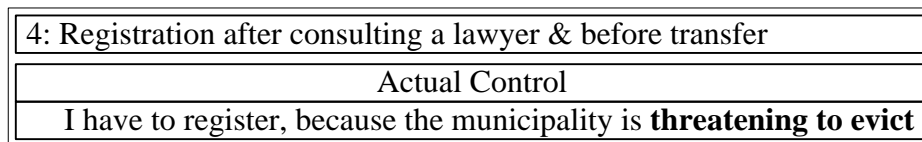
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<sup>37</sup> This municipal policy has changed since 2004. The most recent municipal Customer Care, Credit Control and Debt Collection Policy 2011 states that from July 2010, the municipality will phase out service agreements with tenants and only contract with owners. The policy (Customer Care, Credit Control and Debt Collection Policy 2011, p.15) also states that the municipality will "open only one account per property for the rates, fixed levies and services charges."

The municipal account may also be used as a threat. In participant 022a’s case, the seller used his control over the municipal account to threaten the transaction. According to participant 022a, he conducted an interim off-register transaction. When the seller returned from the Eastern Cape they went to a lawyer, but registration could not occur because the 50% shareholder was missing (refer to section 7.5.2.6(e)). Subsequently the seller attempted to reclaim the house and, as part of the threat, he instructed the municipality to disconnect the electricity services to the house in his capacity as the account holder. Through his lawyer’s intercession with the municipality, probably by providing evidence of the dispute, participant 022a had the municipal account transferred into his name.

*(b) Municipal eviction threat*

An eviction threat by the municipality is an actual control factor in the behaviour “registration after consulting a lawyer and before transfer” (see Figure 7.14).



**Figure 7.14: Belief about a municipal eviction threat that form part of the autonomy aspect of the “registration after consulting a lawyer and before transfer” behavioural model**

According to two participants (043, 064), municipal officials threatened them with eviction in 2010 because they had high outstanding municipal accounts and they were not the registered owners of the houses. Both buyers had consulted a lawyer and attempted registration before the threat by the municipal officials. One buyer signed a Deed of Sale, but is struggling to pay the seller’s outstanding municipal arrears. The other buyer approached a lawyer after conducting an off-register transaction, but cannot obtain transfer without correction of a mistake in the seller’s title deed (a project transfer – refer to section 6.4) and resolution of the estate of the seller. The eviction threat impelled another urgent legal consultation in an attempt to register, however the lawyers were unable to assist them because the reasons why they could not register still applied.



Section 7.5.2.6(a) discusses that, as far as could be established, the municipality has not been successful in evicting Phumla residents in the past ten years. It is also uncertain if the municipality would act on these threats or if registration will prevent eviction. However, the two buyers affected by these threats believed that registration will protect them against eviction, therefore the cases demonstrate how an eviction threat by the municipality facilitates the performance of registration.

#### 7.5.2.4 Lawyer-associated factors

Lawyer-associated factors include anything pertaining to the transaction that is exclusively within the control of lawyers. For example, the procedural adaptations made to the registration process by lawyers is an actual control factor that facilitates registration. The other actual control factor is the lawyers' requirement that the transfer process depend upon payment of the transfer cost. This factor is an interfering control factor in the evaluation of "registration after consulting a lawyer and before transfer".

4: Registration after consulting a lawyer & before transfer
Actual Control
The lawyer has <b>adapted procedures</b> to assist in registration <b>Transfer process conditional</b> upon payment of transfer costs

**Figure 7.15: Beliefs related to lawyers that form part of the autonomy aspect of the "registration after consulting a lawyer and before transfer" behavioural model**

#### *(a) Procedural adaptations*

Section 6.5.6 described the adaptations made by lawyers to the conventional registration procedures. The adaptations are a response to the pre-emptive sales clause and the phenomenon of sellers receiving payment but disappearing prior to transfer. These adaptations facilitate registration as actual control factors in the evaluation of "registration after consulting the lawyer and before transfer" (see Figure 7.15).

Lawyers facilitated registration by giving the participants affected by the pre-emptive sales clause an opportunity to sign a Deed of Sale. In this way, the effect of the pre-emptive sales clause was moderated, since buyers obtained some legal protection until registration could occur.

Another adaptation was to ensure registration even if the seller disappears by having the seller sign a Power of Attorney (refer to section 6.5.6). This adaptation assists buyers in avoiding the control factor of the disappearing seller (refer to section 7.5.2.6(f)) encountered by other buyers.

*(b) Transfer process conditional upon payment of transfer costs*

The payment of the transfer costs introduces barriers at various stages of the registration process. Depending on the specific terms of payments imposed by a given lawyer and the ability of the buyer to pay accordingly, registration can be delayed.

Lawyers may influence registration in three ways that are related to the payment of the transfer costs. First, both lawyers (050, 075, 150, 152) and buyers (035b, 043) reported that lawyers may initiate the registration process; that is, where the Deed of Sale is signed by the buyer and seller, and transfer occurs only once the transfer costs are paid. Second, one buyer reported that the lawyer insisted that she save the money to pay the transfer costs before starting the registration process (039). This practice probably originated because lawyers often struggle to collect their fees with Project 2001 transactions (004, 050, 075, 150, 152). Third, the lawyer may agree to complete the registration process, but keeps the title deed until the buyer pays the transfer costs in full. This happened to two buyers (072, 076) and a lawyer (050) confirmed that he had used this practice in other cases.

#### 7.5.2.5 Employer-associated factors

These are factors linked to employers which facilitate or interfere with a transaction-securing strategy (see Figure 7.16). Employers may make registration a condition of their financial support for an employee's house purchase, which facilitates registration. If employers act as intermediate buyers, they introduce an interfering control factor, since registration is conditional upon the repayment of the financial loan.

3: Registration when buying a house & before consulting a lawyer
Actual Control
My <b>employer</b> will <b>finance</b> the transaction on the <b>condition</b> that registration occurs

4: Registration after consulting a lawyer & before transfer
Actual Control
I have to <b>finish paying my employer</b> before I can register the house in my name

**Figure 7.16: Beliefs related to employers that form part of the autonomy aspects of the behavioural models**

*(a) Financing conditional upon registration*

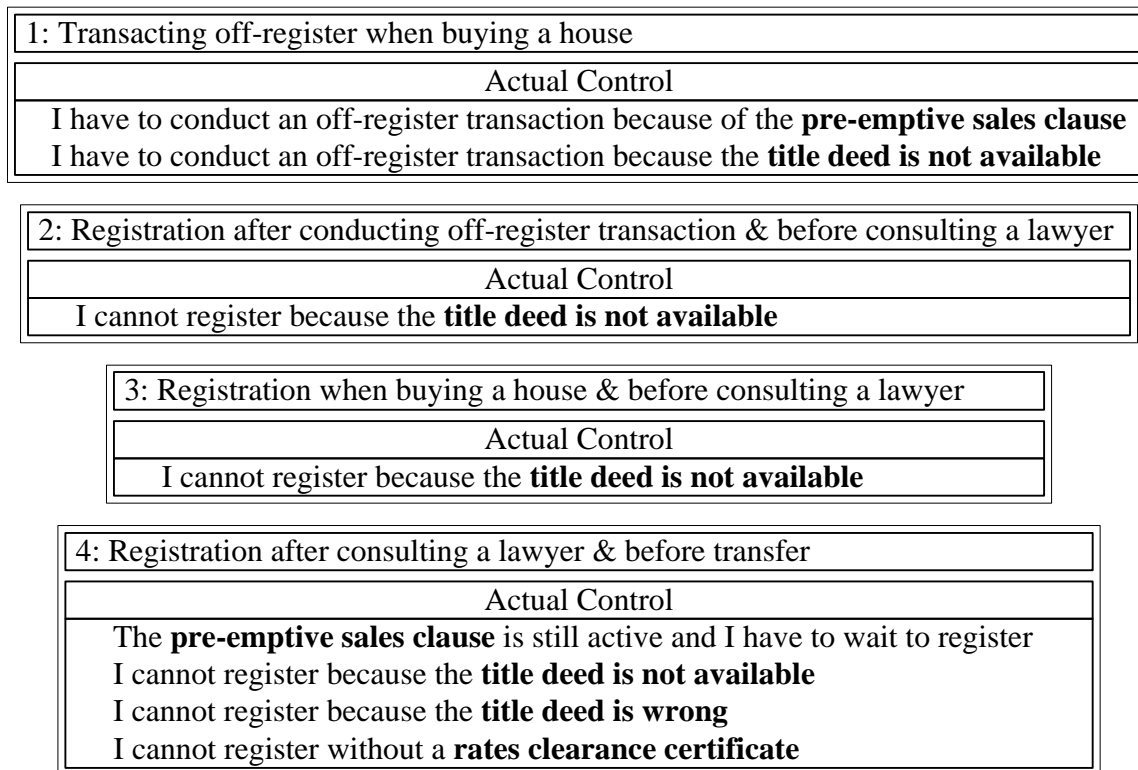
As discussed in section 6.5.5, employers assist employees by providing financial assistance, usually through an interest free loan or donation. However, the financial support from the employer is typically dependent upon registration (024, 031, 037, 054b, 055), because employers have an understanding of land registration (008, 050). Therefore, if registration is a condition of the employer’s financial support, it represents an actual control factor in the evaluation of “registration before consulting a lawyer”. This control factor is also linked to the capacity belief that the employer will provide assistance with registration (refer to section 7.5.1.4).

*(b) Registration conditional upon re-payment*

Where the employer acts as the intermediate buyer, the title deed is registered in the employer’s name and transferred to the employee once the loan has been paid off (031, 037). If the employer acts as an intermediate buyer, the payment of the loan is an interfering factor in evaluating “registration when buying a house and before consulting a lawyer”, since the payment must be completed before the property can be registered in the name of the employee.

### 7.5.2.6 Legal framework-associated factors

Legal framework-associated factors are factors introduced by legislation that affect a transaction-securing behaviour. All of the legal framework-associated factors acted as barriers to registration. These factors include the availability of legal documents such as the title deed and the rates clearance certificate; the restriction on sales and registration introduced by the pre-emptive sales clause; and the identification and presence of the legal owner.



**Figure 7.17: Beliefs about legal requirements relating to documents and restrictions that form part of the autonomy aspects of the behavioural models**

#### *(a) Pre-emptive sales clause*

The first legal framework control factor is the pre-emptive sales clause (see Figure 7.17). The pre-emptive sales clause might be classified as a perceived factor if buyers think it is still active, although it has expired. However, for buyers who participated in the research, it is not a perceived factor, since the pre-emptive sales clause was an actual barrier to registration.

Participants who conducted registered transactions affected by the pre-emptive sales clause stated that they found out about the clause only when they consulted the lawyer (016, 026, 043, 054a, 072). An alternative explanation is that these buyers were aware of the pre-emptive sales clause and may have believed it had expired and did not pose a problem. However, in interviews, the participants never mentioned the expiry of the pre-emptive sales clause as a motivation to consult a lawyer; instead they spoke about, for example, fears of the property being reclaimed (refer to section 7.5.2.2(a)). Therefore, assuming a candid response, the pre-emptive sales clause is an actual control factor when buyers evaluated the behaviour “registration after consulting a lawyer and before transfer”.

The pre-emptive sales clause is also a facilitating actual control factor in the evaluation of “transacting off-register when buying a house”. For example, where a buyer decided to transact off-register as an interim measure, because residents “were not allowed to sell the houses” (020). Refer to section 7.9.1 for an additional discussion on the association between the pre-emptive sales clause and off-register transactions.

It is possible that the pre-emptive sales clause may be used by the municipality to threaten transaction-securing strategies. However, no cases were identified in Project 2001. A municipal official confirmed that the municipality has not acted upon sales within the pre-emptive sales clause period (001). Although municipal officials did not elaborate on the reasons behind this decision, it is possible that it relates to the municipality’s unsuccessful attempts at evictions in other instances. For example, in 2000 the municipality instituted legal proceedings against Phumla residents to recover municipal arrears (Municipal council minutes 28/01/2003). The houses were confiscated and bought by the municipality in an execution sale for R10. However, three years later the ex-owners were still occupying the houses, and the municipality decided to sell the houses for a purchase price equivalent to the municipal arrears, to the same owners. Other possible reasons that cannot be discounted is political expediency and a reluctance to act while the provincial or national government is not instituting proceedings against buyers who buy houses within the restrictive sales period (refer to section 2.4).

*(b) The title deed is not available*

The title deed is required for registration and represents an actual control factor. The unavailable title deed affected evaluations of all four behaviours (see Figure 7.17).

If the title deed is unavailable because it has not been transferred from the municipality to the seller (a beneficiary in the project), registration of subsequent transactions cannot occur. The parties to the transaction have to wait for the municipal conveyancers to complete the process (refer to section 6.4). In response to the unavailability of title deeds, buyers conducted either off-register transactions (035a, 073) or off-register transactions with the promise to register once the title deed is transferred (029, 034, 054b, 067, 076). However, the unavailable title deed does not always dissuade buyers from approaching a lawyer. For example, although they knew that registration could not occur without the title deed, two participants still consulted the lawyer (034, 076): the one participant on advice from the municipality (refer to section 7.4.4) and the other because of the fear that the seller might attempt to reclaim the house (refer to section 7.5.2.2(a)).

It is sometimes possible for the lawyer of the transacting parties to obtain the title deed by conducting the project transfer with the approval of the municipality (refer to section 6.5.6). This strategy removes the title deed as an actual control factor in “registration after consulting a lawyer and before transfer”.

As discussed in section 6.4, there are title deeds in Project 2001 that were incorrectly transferred as part of the original housing project; the registered owners occupy the properties of other registered owners. For example, in the case of participant 064, the title deed is available, but registration cannot occur, because although the seller is the recognised beneficiary of the property, he is not the registered owner.

Missing or destroyed title deeds do not appear as control factors after a lawyer has been consulted, because of the legal processes that can be used by a lawyer to replace the title deeds (refer to section 6.5.6). Lawyers mentioned this problem (050, 075, 152), but the missing or

destroyed title deeds were not discussed by participants who bought houses, therefore this control factor is not included in Figure 7.17.

*(c) Rates clearance certificate and municipal arrears*

The rates clearance certificate interferes with registration, since the municipality will not issue a certificate unless the municipal arrears of the seller are paid and the registrar is not legally permitted to register the transfer of a title deed without a rates clearance certificate (Municipal Systems Act 32 of 2000, s.118). The rates clearance certificate is an actual control factor in the evaluation of “registration after consulting a lawyer and before transfer” (see Figure 7.17), and is also linked to the capacity factor discussed in section 7.5.1.2.

For four participants the rates clearance certificate delayed registration until they could pay the municipal arrears of the seller (016, 026, 043, 072). All four participants signed Deeds of Sale and subsequently made payments into the seller’s municipal account.

A variation on the hindrance due to rates clearance certificates is when the buyer accumulates municipal arrears while waiting for the pre-emptive sales clause to expire. When participant 054a bought a house in 2005 the seller did not have any outstanding municipal arrears. They signed a Deed of Sale, but participant 054a had to wait three years for the pre-emptive sales clause to expire so the transfer could occur, all the while accumulating municipal arrears. When the pre-emptive sales clause expired, she had to delay the transfer by an additional year to pay off her municipal arrears and obtain the rates clearance certificate.

*(d) Seller is not the legal owner*

Registration can occur only if the seller is the legal owner or can legitimately act for the legal owner. If the seller is not the legal owner, an actual control factor is introduced in the evaluation of “registration after conducting an off-register transaction and before consulting a lawyer” and “registration after consulting a lawyer and before transfer” (see Figure 7.18).

The seller's ownership status may impose restrictions in several ways: he may be not be the legal owner because, although having inherited the property, a transfer did not occur; where the seller bought the house using an off-register transaction; where the seller is merely a tenant; or where the seller is looking after the house.

There are many difficulties in the inheritance of state-subsidised houses that fall outside the scope of this dissertation. Suffice to say that because few owners have wills, the heirs are not identified when the owner dies (Lawyers 151, 152). Although the parties selling regard themselves as the heirs and assume that it is their right to sell the property, they are not legally the registered owners of the property.

Lawyers (050, 150, 152) confirmed that they have encountered cases where the seller was acting as the heir, but was not legally recognised as such. Participant 073's case illustrates this problem. He bought a house off-register from the brother of the deceased owner in 2003. He consulted a lawyer in 2009 and was advised to find out if the registered owner had any children, as they may be considered the legal heirs. To complicate matters, the sister of the deceased was claiming a share of the purchase price. A community leader (051) related a comparable case where the sisters of the deceased owner sold the house without his wife's knowledge.

Similarly, in a case where the sellers were not the legal owners, the owner of the house did not die but became mentally disabled due to an accident. His brother and sister sold the house, but registration could not occur because they had not been appointed as the legal guardians of the owner (043, 063).

On the other hand, participant 070 bought a house from sellers who themselves bought the house using an off-register transaction. In this case the lawyer repaired the chain of transfers, because the original owner could be contacted. Two lawyers reported that they had dealt with similar cases (050, 150).



However, in other cases, the problem of the missing legal owner cannot be resolved. Participant 054b bought a house using an interim off-register transaction, because the title deed was not available. Once the title deed was delivered, participant 054b discovered that the seller was not the legal owner and no-one knew the registered owner. Although it was not explored in the interview it is possible that participant 054b decided not to pursue the search for the registered owner since there was a chance that the owner may lay claim to the house.

*(e) 50% shareholder*

The 50% undivided shareholder is an actual control factor associated with the behaviour “register after consulting a lawyer and before transfer” (see Figure 7.18). The discovery of a 50% shareholder who has not been consulted about the sale or cannot be found is a control factor that is usually identified when the lawyer is consulted. In the original housing allocation, married couples, co-habiting partners and adult dependants were registered as 50% undivided shareholders on the title deed. If the house is sold, both shareholders must sign for transfer.

The problem of the 50% shareholder for buyers was confirmed by a community leader (017), municipal official (015) and lawyers (050, 051, 075). In the case of participant 022a, the 50% shareholder could not be found for registration. The 50% shareholder of the house bought by participant 029 is the sister of the seller and refused to sign because she did not receive a share of the purchase price. A community leader also reported a case whereby a husband sold the house using an off-register transaction, without his wife’s knowledge, while she was in the Eastern Cape (051). On her return, she contacted the community court to assist her to reclaim the house. In all the cases the 50% shareholder was a woman. However, according to a lawyer, even though 50% shareholders may not be part of the original agreement, they may subsequently agree to such a sale (075).

2: Registration after conducting off-register transaction & before consulting a lawyer
Actual Control
The <b>seller is not the owner</b> I want to register but the <b>seller disappeared</b>

4: Registration after consulting a lawyer & before transfer
Actual Control
The seller is not recognised as the legal owner, because... ... the property is part of an <b>estate</b> that needs to be finalised ... the seller has not been appointed as the <b>guardian</b> of an owner who is incapable of acting legally ... the seller bought the house using an <b>off-register transaction</b>
There is a <b>50% shareholder</b> who ... ... is <b>missing</b> ... <b>wants a share</b> of the purchase price
I want to register but the <b>seller disappeared/died</b>

**Figure 7.18: Beliefs about legal requirements relating to the legal owner(s) that form part of the autonomy aspects of the behavioural models**

*(f) Seller disappears or dies*

If the seller disappears or dies, an interfering control factor is introduced. This factor is linked to the behaviour “registration after conducting an off-register transaction and before consulting a lawyer” and “registration after consulting the lawyer and before transfer” (see Figure 7.18).

Four buyers (020, 022a, 026, 054b) reported that the seller disappeared before registration occurred, while in one case (064), the seller died. If this happens, registration cannot be completed since the seller must sign for transfer; unless the seller reappears, registration will not occur.

Participant 020 conducted an interim off-register transaction because of the pre-emptive sales clause, but despite a promise to register, the seller never returned. Sellers are also known to disappear after an unsuccessful attempt to reclaim a house. This was experienced by participants 022a, 026, and 054b. Lawyers (150, 152) and a municipal official (001) confirmed that, in both

off-register and registered transactions, the seller might disappear and never return for registration. Refer to section 6.5.6 for the adaptations lawyers introduced to address this problem.

## **7.6 Summary**

Four behaviours were defined in section 7.2:

- Transacting off-register when buying a house
- Registration after conducting an off-register transaction and before consulting a lawyer
- Registration when buying a house and before consulting a lawyer
- Registration after consulting a lawyer a before transfer

Sections 7.3 to 7.5 categorised buyers' beliefs according to their attitude towards the behaviour, perceived subjective norm, and their perceived and actual behavioural control constructs. The attitudinal beliefs included personal and transactional objective beliefs. The perceived subjective norm consisted of beliefs related to neighbours, friends and family, sellers, the community court, the municipality, employers and lawyers. The capacity aspect of perceived and actual behavioural control was formed from beliefs about access to external securing parties; financial costs; information and assistance by employers. The beliefs that form part of the autonomy aspect were subdivided according to the associated loci of power or regulatory structure; that is the buyer, seller, municipality, lawyers, employers and legal framework.

The next sections use the findings from sections 7.3 to 7.5 to develop the concept of the transactional environment. Firstly, the loci of power and regulatory structures associated with each of the four behaviours are identified. Secondly, the analysis of the transaction-securing strategy sequences is used to develop the Buyer - Security/Threat - Loci of Power cycle. Thirdly, the impact of time on the transactional environment is explored.

## **7.7 Transactional environment**

This section identifies the various configurations of the transactional environment associated with the four behaviours identified in section 7.2. Although all the loci of power and regulatory structures are present in the transactional environment of Project 2001, they appear in distinct configurations when viewed from the perspective of the buyer evaluating a behaviour.

As previously described, the transactional environment consists of regulatory structures, loci of power and the behaviour components. The loci of power are defined as an individual and/or organisation that exert control over transaction-securing strategies, while regulatory structures are rules, regulations and/or laws that govern the actions of the loci of power and control transaction-securing strategies (refer to section 4.1).

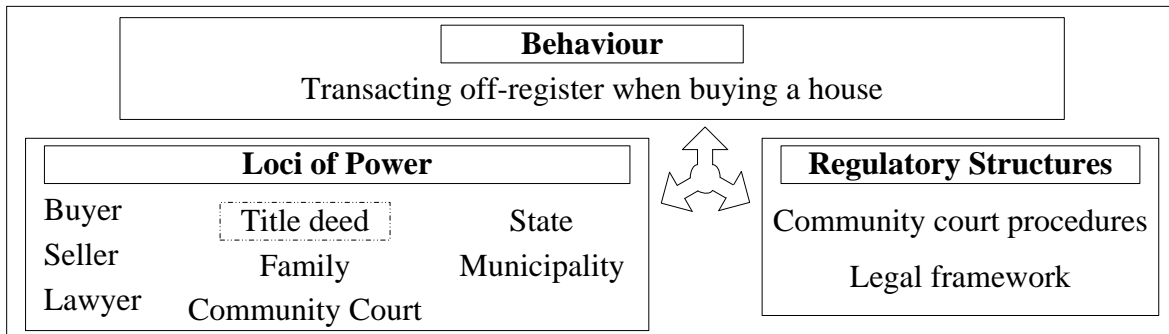
The buyer and seller are loci of power in all four transactional environment configurations. As noted in sections 7.5.2.1 and 7.5.2.2 the buyer and seller as loci of power are related to control factors. In general, the buyer is the main decision-maker, though they require the seller's consent and cooperation in selecting the transaction-securing strategy and the terms on which it is conducted.

Figure 7.19 illustrates the configuration of the transactional environment associated with the behaviour "transacting off-register when buying a house". In addition to the buyer and seller, this configuration includes all of the external securing parties described in section 6.5.3, with the exception of the police (refer to section 6.5.3), as loci of power. These loci of power, that is the family, community court and lawyer, are related to the transactional objective beliefs (refer to section 7.3.2(b)). The other loci of power, such as the municipality and the state, are linked to the legal framework, in particular the pre-emptive sales clause, which acts as a barrier to registration (a control factor - refer to section 7.5.2.6(a)).

The title deed is a special power locus. Even though the title deed is an artefact associated with the legal framework, the title deed is categorised as a power locus, because from the perspective of buyers, it exerts control over transaction-securing strategies. If the title deed is not available, it

prevents access to registration (a control factor - refer to section 7.5.2.6(b)), and influences the decisions of buyers.

The regulatory structures in this configuration are the community court procedures (refer to section 6.5.2) and the legislative framework. The link between the municipality, state and legal framework was mentioned above. The legal framework is also associated with off-register transactions that were conducted because the title deed was not available and, in this way, prevented access to the registration system (a control factor - refer to section 7.5.2.6(a)).



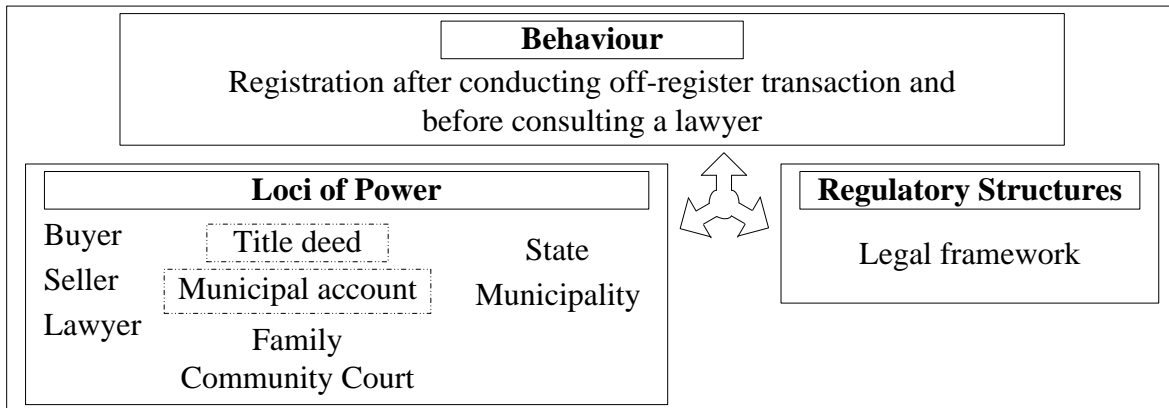
**Figure 7.19: Transactional environment configuration: Transacting off-register when buying a house**

The transactional environment configuration of the second behaviour (see Figure 7.20), “registration after conducting an off-register transaction and before consulting a lawyer”, is similar to that of the previous configuration.

The loci of power, such as the family and community court, are present in this configuration, because the buyers retain the belief that they will provide evidence or stand as witness when the lawyer is consulted (refer to section 7.5.2.1(a)).

Again the title deed is included as a special power locus. In this configuration, the title deed also plays a role in the beliefs about reclaim threats, potential or actual, by a seller (refer to sections 7.5.2.2(a) and (b)). Since the seller might use the title deed to override all other evidence the buyer might hold, the buyer believes he is forced to attempt registration and obtain the title deed,

to prevent a reclaim of the house. Therefore the title deed exerts control in the evaluation of this registration behaviour.

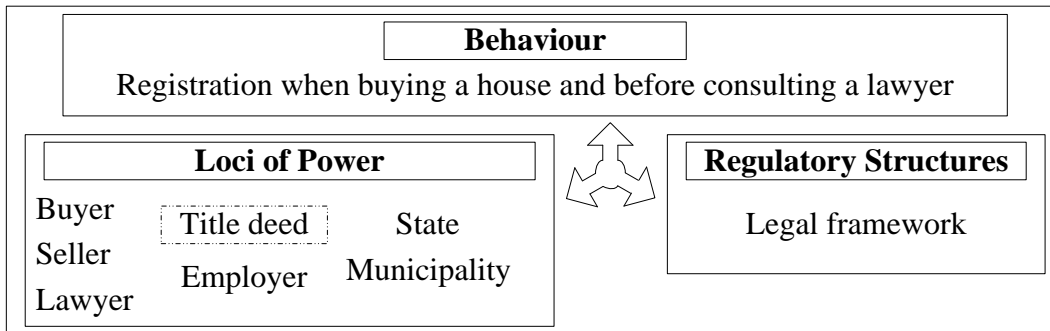


**Figure 7.20: Transactional environment configuration: Registration after conducting an off-register transaction and before consulting a lawyer**

Furthermore, in the evaluation of “registration after conducting an off-register transaction and before consulting a lawyer”, the municipal account is also a power locus. This is due to the fact that some buyers were concerned that the municipal account holder (usually the seller) may threaten the transaction or, if the municipal account is in the name of the buyer, that the buyer believes that the municipal account supports the transaction (refer to section 7.5.2.3(a)).

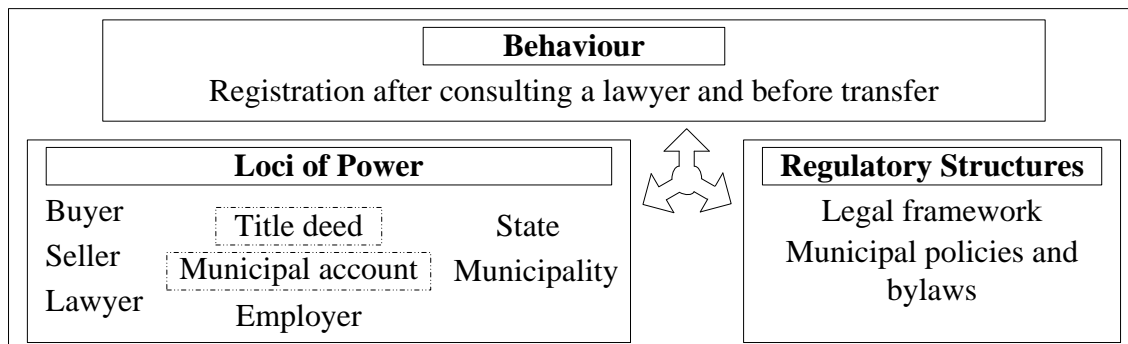
The legal framework is a regulatory structure in this configuration, because the buyer is evaluating registration. However, the community court procedures are removed, because the procedures conclude with the off-register transaction and the community court’s recommendation to register.

In the evaluation of the third behaviour “registration when buying a house and before consulting a lawyer”, the loci of power include employers, lawyers, the state and municipality, as well as the title deed (see Figure 7.21). An employer acts as a power locus when a transaction is controlled by an employer or when the employer acts as an intermediate buyer (refer to section 7.5.2.5). In this configuration, the regulatory structures are confined to the legal framework.



**Figure 7.21: Transactional environment configuration: Registration when buying a house and before consulting a lawyer**

The transactional environment configuration of behaviour four, “registration after consulting lawyer and before transfer”, is illustrated in Figure 7.22.



**Figure 7.22: Transactional environment configuration: Registration after consulting a lawyer and before transfer**

This configuration shows that, after consulting the lawyer, the off-register buyers do not believe that the family or community court will assist them in registration. However, the title deed and municipal account again feature as special loci of power. In this configuration of the transactional environment, the title deed facilitates, delays or prevents the registration process as dictated by the legislative framework. On the other hand, the buyers may still believe that the attribution of the municipal account will support the transaction (refer to section 7.5.2.3(a)).

The role of the lawyer as power locus is also modified in the evaluation of “registration after consulting lawyer and before transfer”. This is because lawyers exert particular control over

registered transactions. They may assist a buyer through application of the procedural changes at their disposal, or they may prevent a buyer from accessing registration (refer to section 7.5.2.4).

The regulatory structures in this configuration are the legal framework, and municipal bylaws and policies. Of particular interest, as they affect transactions, are the laws associated with alienation, the bylaws and policies controlling the issue of rates clearance certificates (refer to section 7.5.2.6(c)) and the waiving of the pre-emptive sales clause (refer to section 7.5.2.6(a)).

In Figures 7.23 to 7.26 the four configurations of the transactional environment are populated with the loci of power and the regulatory structures, as well as the beliefs identified in sections 7.3 to 7.5. Following the figures, the transactional environment is developed further with the analysis of the transaction-securing sequences.



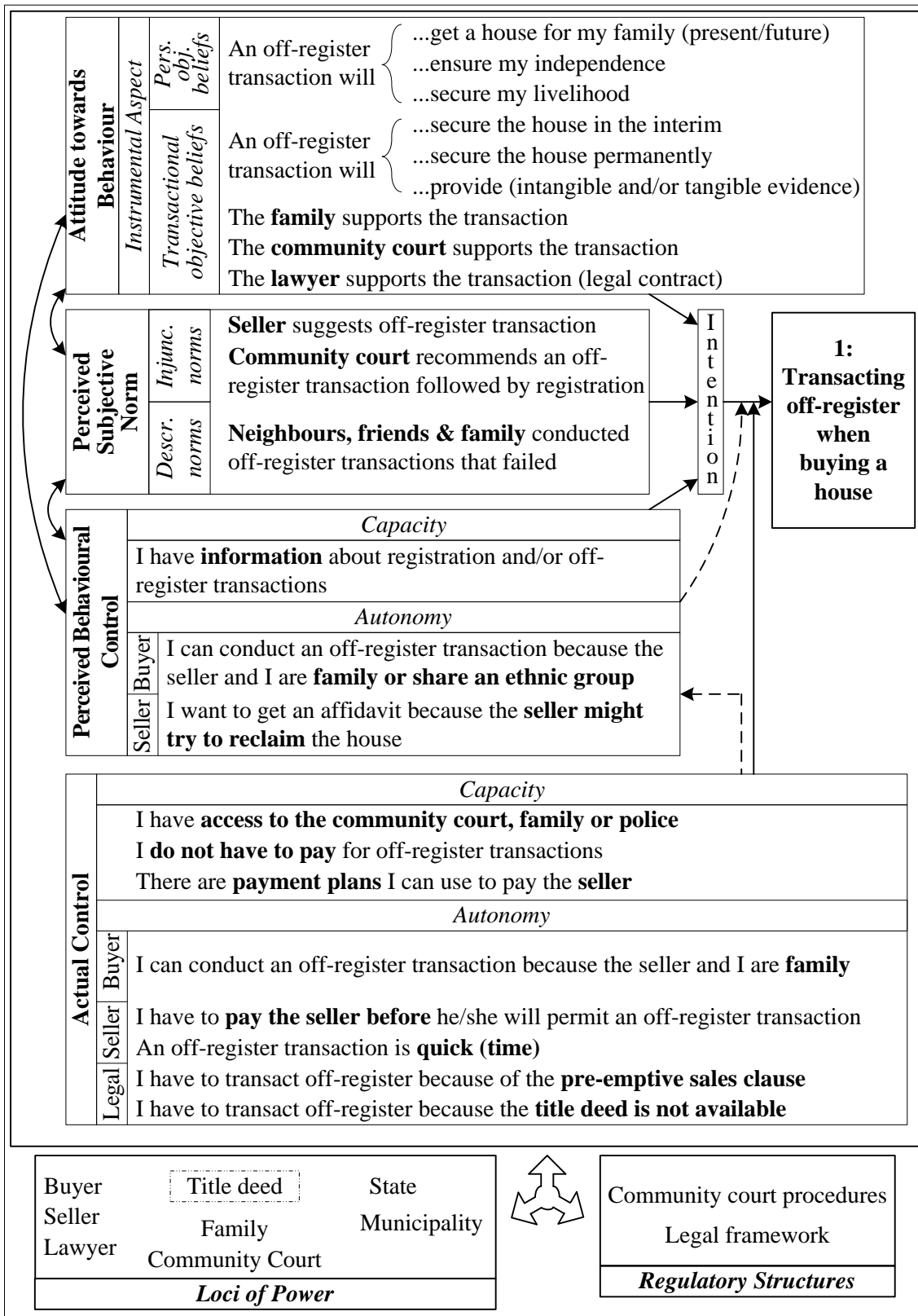
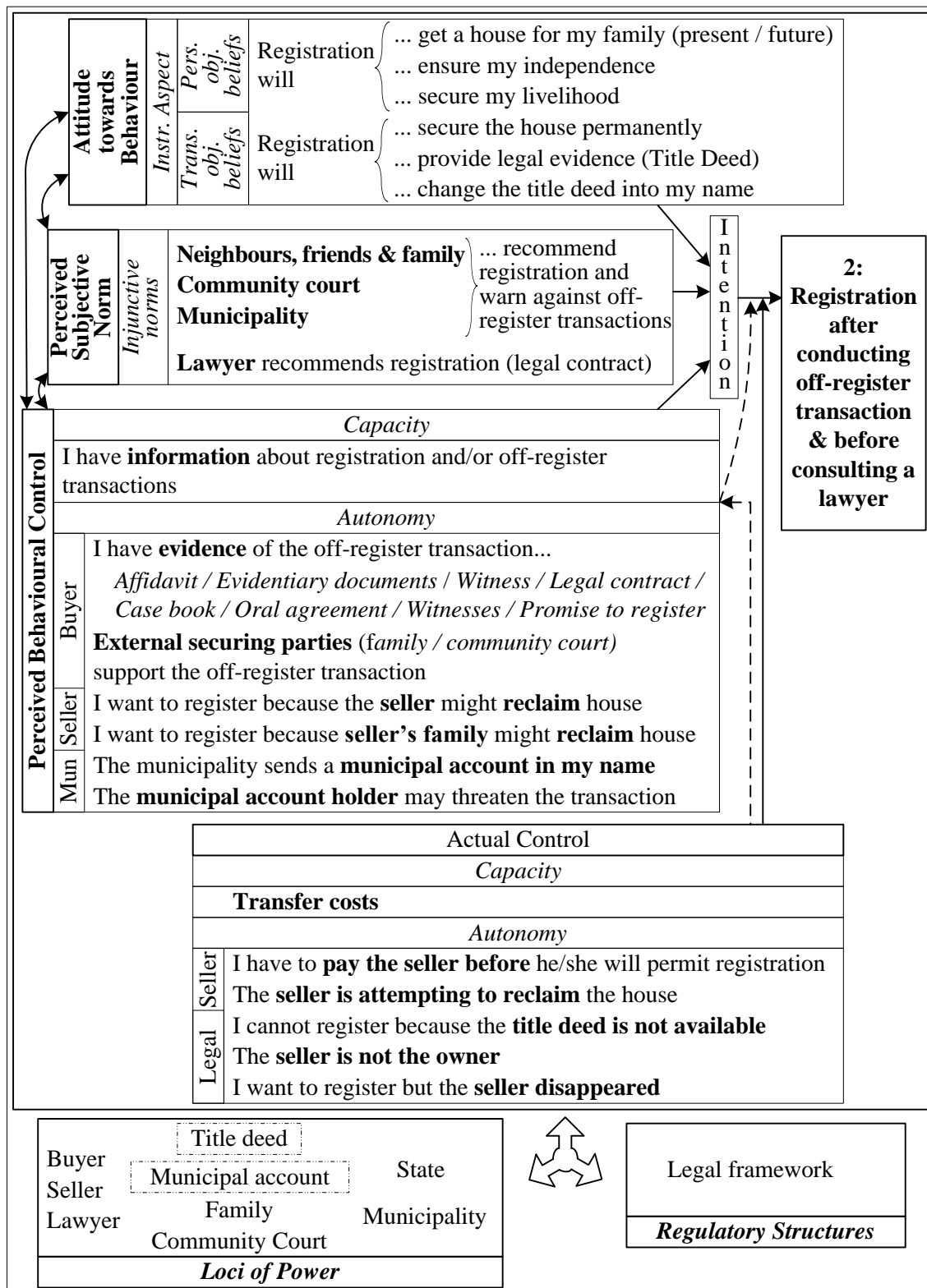
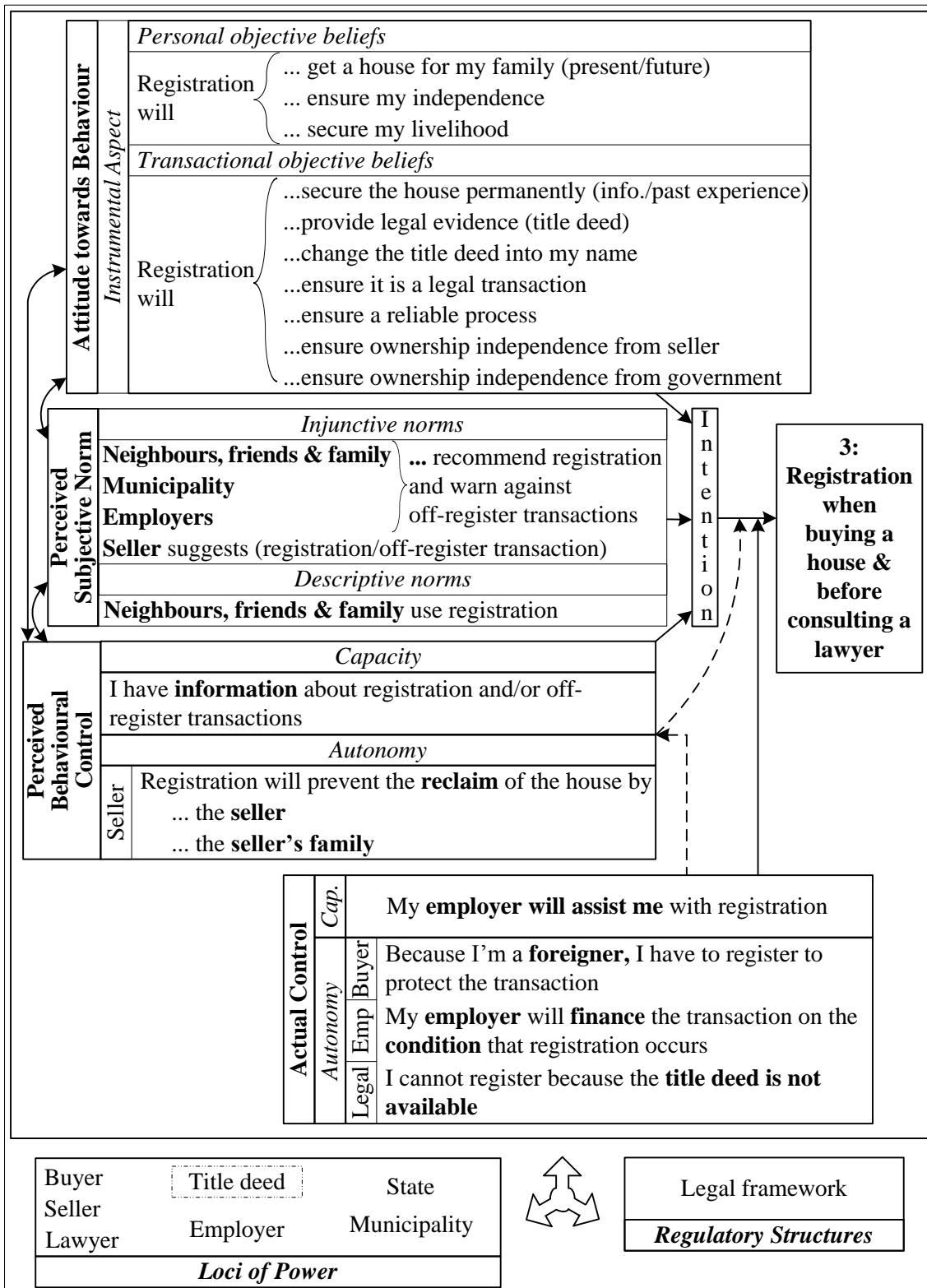


Figure 7.23: Transacting off-register when buying a house behavioural model



**Figure 7.24: Registration after conducting an off-register transaction and before consulting a lawyer behavioural model**



**Figure 7.25: Registration when buying a house and before consulting a lawyer behavioural model**

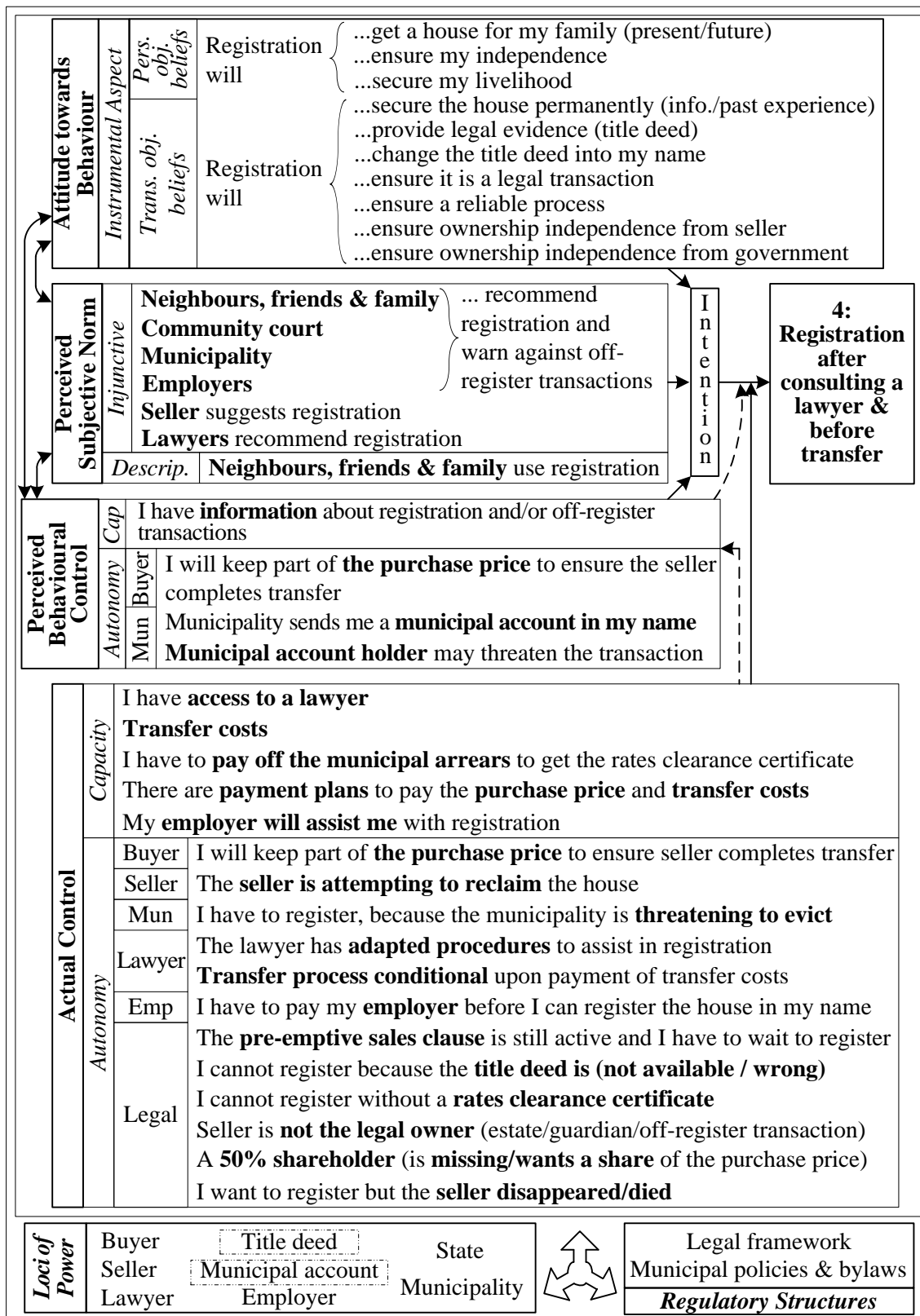


Figure 7.26: Registration after consulting a lawyer and before transfer behavioural model

## **7.8 The Buyer - Security/Threat - Loci of Power cycle**

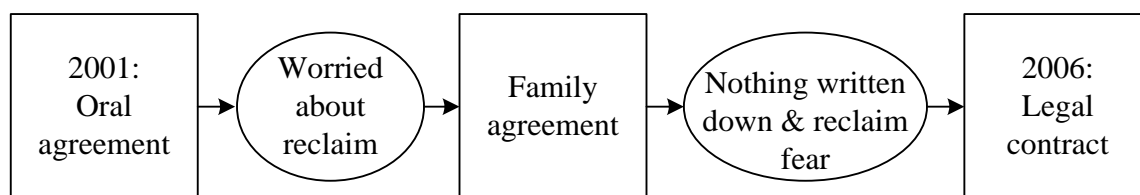
This section develops the Buyer - Security/Threat - Loci of Power cycle, an additional component of the transactional environment, by analysing the transaction-securing sequences. These sequences develop when a buyer uses two or more consecutive transaction-securing strategies. The transaction-securing sequences are particularly useful to further the analysis in that, when buyers use a sequence of strategies, the reason why one transaction-securing strategy may have been replaced or reinforced by another are more explicit. Therefore, the Buyer - Security/Threat - Loci of Power cycle provides additional understanding of why buyers decide to evaluate a particular transaction-securing strategy.

Among the participants who bought houses, eight reported having used transaction-securing sequences. It is possible to identify the pivotal beliefs linking the different transaction-securing strategies. A pivotal belief is the main belief amongst the other beliefs that motivates, inspires or forces a buyer to evaluate a transaction-securing strategy. Each sequence, and the associated pivotal beliefs, is unique to the transaction circumstances; on a general level, they consist of a transaction-securing strategy, followed by uncertainty surrounding the security provided by the transaction-securing strategy which is associated with a pivotal belief, to which the buyer responds with another transaction-securing strategy.

This section first analyses the transaction-securing sequence of one participant to illustrate the development of the Buyer - Security/Threat - Loci of Power cycle. This is followed by a discussion of the experiences of other buyers in terms of the cycle.

Participant 076 conducted an off-register transaction with the seller using an oral agreement because the title deed was not available (see Figure 7.27). Although the title deed had not been delivered to the seller as part of the original project transfer, the buyer and seller assumed that this will occur. Subsequent to the oral agreement, participant 076 became concerned that the seller might attempt to reclaim the property, based on information she obtained from friends. She decided to discuss the matter with the seller's parents who live in the Eastern Cape; participant 076 and the seller are originally from the same Eastern Cape village. The seller's parents

acknowledged the sale. However, this assurance was fleeting; as participant 076 stated, “then afterwards I feel that I’m not safe, because there was nothing written down . . . it will be easy for him to claim the house back”. In response to this fear, she decided to consult a lawyer who supervised the signing of a legal contract between participant 076 and the seller. Participant 076 believed that if a dispute arises, she could consult the lawyer. However, participant 076 wants to complete registration and she wants the title deed, “because I want to know . . . that my house is mine, it is finally mine.”

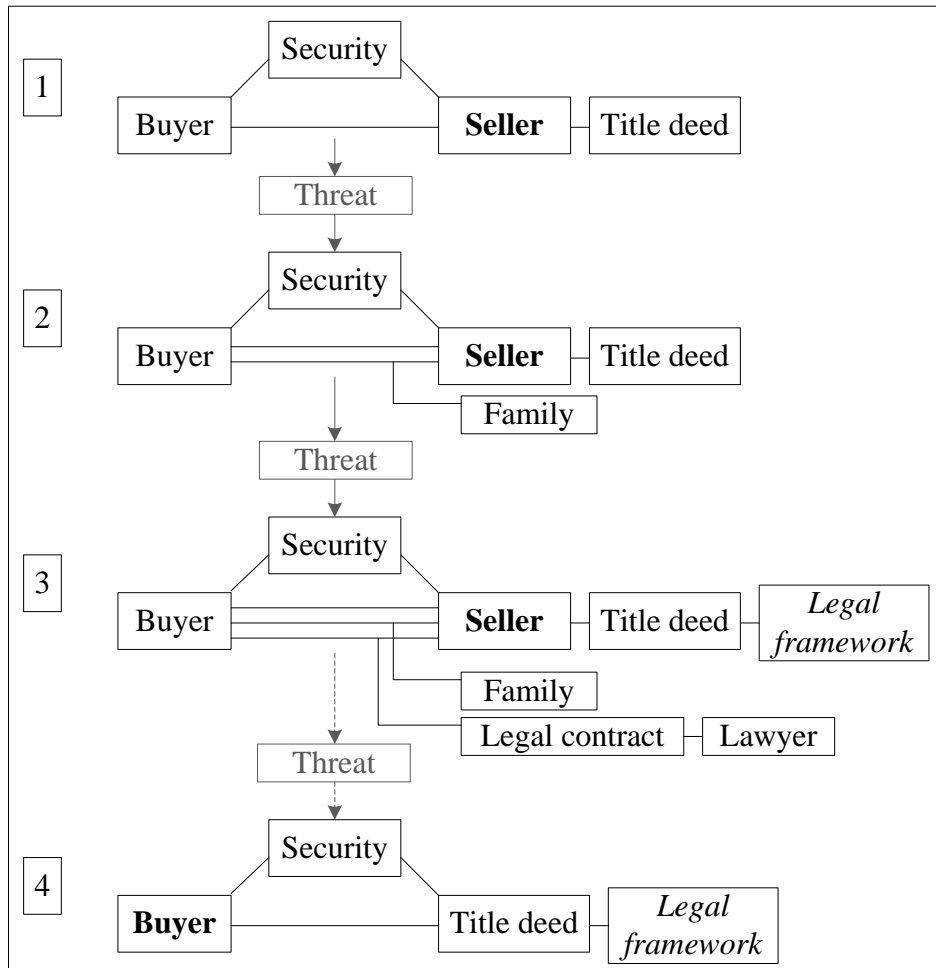


**Figure 7.27: Conceptual diagram: Transaction-securing process of Participant 076**

The oral agreement between participant 076 and the seller created a relationship, and a balance of power, between them (see Figure 7.28). The seller represents the main power locus in the relationship, because he is the registered owner on the (expected) title deed, which is another power locus.

The potential reclaim threat introduced uncertainty in the relationship and represents the pivotal belief. This resulted in an attempt by participant 076 to re-enforce the relationship by obtaining confirmation of the sale from the seller’s parents. The seller’s family acts as another power locus.

But participant 076 recognised that because of the (expected) title deed, the seller was still the primary power locus in the transaction relationship. Also, there was no written proof of the transaction. She then attempted to further reinforce the transactional relationship by adding a legal contract and by extension the lawyer.



**Figure 7.28: Participant 076: Security-Threat-Loci of power**

Based on her remarks, participant 076 will insist on registration once the title deed is delivered to the seller and this represents the remaining step in the process. Registration will sever the link between the seller and the title deed, and by extension, the property. Therefore, transferring the title deed to the buyer removes the seller from the transaction relationship, but retains the title deed as power locus and legal framework as regulatory structure.

The other transaction-securing strategy sequences used by buyers follow the same pattern. The relationship between the seller and the buyer is initially created with an oral agreement (022a, 029, 073), affidavit (064) or Deed of Sale (026). The seller remains the main power locus because of the title deed, which also acts as a power locus (refer to section 7.7).

The relationship balance may be disturbed by various forces or occurrences: for example, a pivotal belief related to new information (022a); the seller attempting to threaten, or potentially threatening, the buyer with a reclaim (026, 029); another person who claims ownership rights or proceeds (073); or the death of the seller (064). Reclaims or the fear of reclaims are linked to all such pivotal beliefs, and the main power locus that underlies all of the disruptions is the title deed. This also shows that the transaction balance in an off-register transaction depends on the continued cooperation of the seller. If the balance is disturbed, the buyer attempts to restore the balance by signing an affidavit (029) or consulting a lawyer (022a, 026, 029, 064, 073).

A transaction sequence may also involve the consecutive purchase of two different properties, where the experience with the first property affected the transaction-securing strategy used with the second property. Two buyers experienced this type of transaction-securing strategy sequences (022, 035).

Participant 022 bought the first property based on an oral agreement with the promise to register. When participant 022 and the seller consulted the lawyer, a previously unacknowledged 50% shareholder (refer to section 7.5.2.6(e)) was identified who could not be located. This prevented registration, but did not change the transaction or relationship between participant 022 and the seller. The seller then received information from his friends, indicating to him that he could reclaim the house. He attempted a reclaim, and disrupted the transactional relationship. However, the reclaim was not successful since participant 022 used his lawyer to defend his claim, or to put another way, his association with the lawyer gave him the power to restore the balance in the relationship with the seller; faced with someone knowledgeable about the original agreement and the legal implications, the seller's reclaim was ineffectual. When participant 022 bought a second house, he immediately consulted a lawyer for registration to ensure that he had legal proof of the transaction, that is the title deed, thereby preventing any claim by the seller to the property.

Participant 035 used an affidavit to secure his first property. When the seller received the title deed from the municipality (a project transfer), he reclaimed the house. Participant 035 bought a second house and used registration to secure the transaction.



Participant 022 and 035's cases show that the disruption to the relationship may be caused by new information, but may also be a result of the seller getting the title deed; these cases also show that the disruption might be intensified by the actions of the seller. In participant 035's case, the seller may have responded to the disruption (receiving the title deed) by regarding it as an opportunity to attempt a reclaim. A variation is introduced by the case of participant 064 (refer to section 8.5). After the off-register transaction, the seller died, disrupting the relationship between the seller and buyer. This disruption was intensified because the seller, although he was the subsidy beneficiary, is not the owner recorded on the title deed (refer to section 6.4). This introduces additional uncertainty and another would-be owner (the owner registered incorrectly on the title deed).

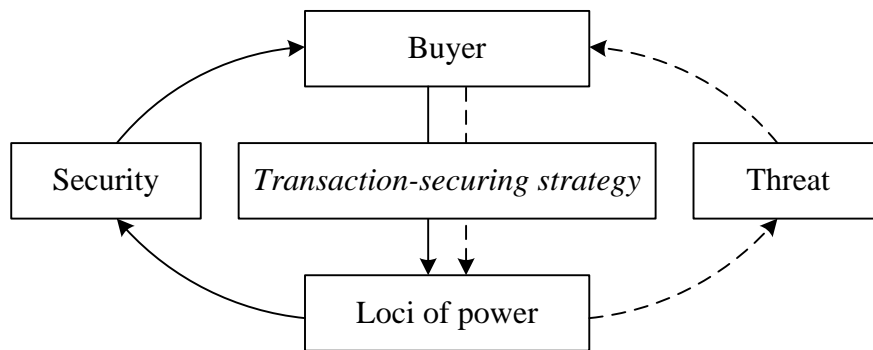
The change in transaction-securing strategies can be regarded as a move from one power locus to another. With an off-register transaction, the seller acts as the power locus, since it is through the continued cooperation on the part of the seller and the recognition of the off-register transaction, that the buyer's tenure security is maintained. However, this is a tenuous situation such that, if this relationship is disrupted, the buyer must seek another power locus in order to trump the power of the seller.

The move from one power locus to another is not confined to the buyer. The seller may attempt to reclaim a house by changing the power locus. In participant 026's case the seller approached the community court after signing a Deed of Sale and tried to get their support in his reclaim attempt. According to participant 026, this action by the seller was triggered because he received the title deed from the municipality. The community court refused because of their stance in support of registration (refer to section 6.5.4).

Analysing the transaction sequences also shows that a power locus represents a duality; a power locus can support or threaten security. In Project 2001, there were off-register transactions that were not threatened by the sellers, despite the fears of the buyers (020, 023, 034, 039, 063, 064, 067, 072, 076), and other off-register transactions that were threatened (022a, 029, 035a, 054b, 073). This is also true of the municipality acting in terms of the law. The municipality recognises

the title deed as a proof of ownership, but it is also possible for the municipality to threaten security. For example, the municipality may elect to exercise its legal right to sell a property in execution to recover municipal arrears.

Using the example of participant 076 above, and the other transaction-securing sequences, a cycle is identified (see Figure 7.29). The buyer conducts a transaction-securing strategy involving a power locus. The power locus secures the transaction, but the same power locus or another power locus may threaten the transaction at a later stage. The buyer then conducts another transaction-securing strategy involving a different power locus.

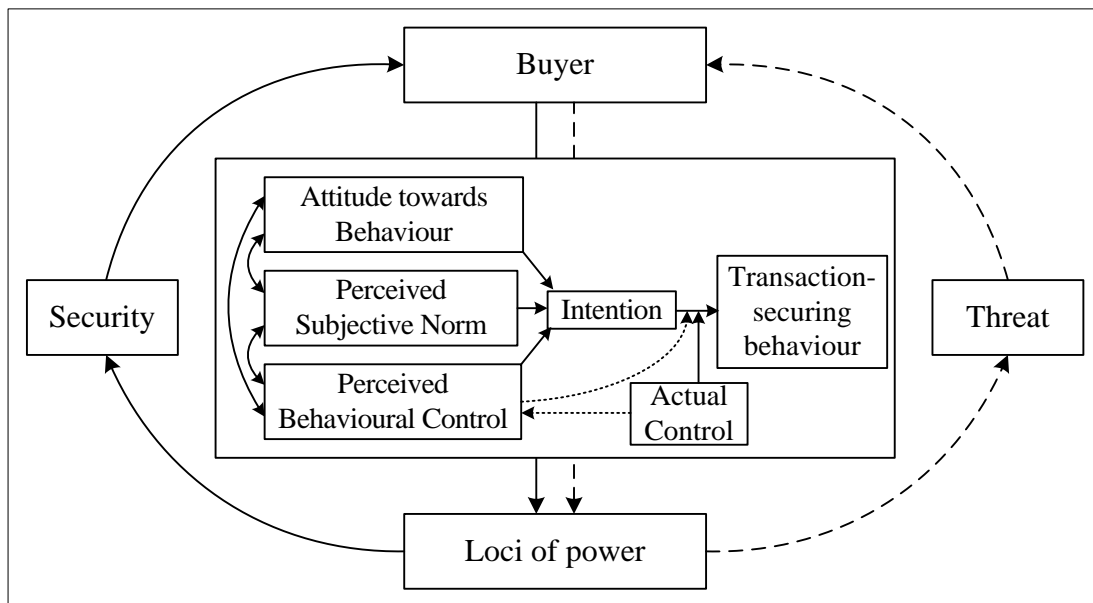


**Figure 7.29: Buyer - Security/Threat - Loci of Power cycle**

Buyers also exert control over a transaction-securing strategy but, in off-register transactions, the buyers usually represent a weaker power locus compared to the seller, because the seller holds the title deed. During the registration process, the power balance favours the seller in the beginning, but this shifts as the process continues until registration occurs and the buyer holds the power.

One way in which off-register buyers may increase their power is to build extensions to houses. Buyers who built extensions were successful in using the value added by the extensions to fend off threats by sellers, since the seller could not afford to repay them (026, 054b). Note that, legally, extensions are not regarded as proof of ownership, therefore this may only represent a temporary defence against threats.

The cycle illustrated in Figure 7.30 shows the link to the behaviour components of the theoretical framework in Figures 7.23 to 7.26. The buyer decides to evaluate a particular transaction-securing strategy in conjunction with perceptions and knowledge of the loci of power, security and threats associated with a transaction-securing strategy. The behaviour is then performed, establishing a power balance between the buyer and the power locus. As time passes, the power locus (or another power locus) might threaten, or be perceived by the buyer to threaten, the transaction, which initiates a new transaction-securing strategy evaluation. A threat may also result in the buyer abandoning the transaction, for example, participant 035 could not defend the off-register transaction when the seller decided to reclaim the property, because the affidavit proved useless and he had no alternatives.



**Figure 7.30: Buyer - Security/Threat - Loci of Power cycle and behavioural models**

The transaction-securing sequences used by participants (063, 072) who conducted off-register transactions using the organisational process of the community court differ from those described above, as they did not decide to register because of a disruption in the relationship created by the off-register transaction. However, they followed the advice of the community court, which is based on the awareness of threats that have the potential to cause a disruption.

The Buyer - Security/Threat - Loci of Power cycle model is also supported by the experience of buyers who decided to register without evaluating off-register transactions. These buyers decided to register because they were aware of the reclaim danger (016, 021, 022b, 033, 035b, 043, 054a, 056, 057, 066, 070, 071) and, therefore, bypassed other loci of power and directly used the power locus they perceived to be the strongest. For these buyers, the title deed linked to the legal framework occupies this position.

The behavioural evaluation models provide understanding of the beliefs used by the buyers to evaluate a transaction-securing strategy in relation to attitudes towards behaviour, perceived subjective norms, and perceived and actual behavioural controls. The Buyer - Security/Threat - Loci of Power cycle may explain why buyers decide to evaluate a particular transaction-securing strategy.

Finally, as individuals move through the Buyer - Security/Threat - Loci of Power cycle, their experiences increase the range of information about transaction-securing strategies, and the associated threats and security, amongst their friends, neighbours and family, and other residents. The increase in information is related to time; the next section considers time in relation to the transaction-securing strategies in Project 2001.

## **7.9 Time and transaction-securing strategies**

The evaluation of transaction-securing strategies is associated with time in two ways. Over time, the behaviour, loci of power and regulatory structures in the transactional environment in Project 2001 changed, thereby changing the transaction-securing strategies that occur within this environment. Time also affected the evaluation of individual transaction-securing strategies by the introduction of intervals between events in the transaction-securing processes, which may represent barriers or opportunities.

### ***7.9.1 Change in information within the transactional environment over time***

This section argues that three time related changes in the transactional environment caused an increase in the use of registration. The first change is the expiry of the pre-emptive sales clause. The second is the procedural adaptations made by lawyers. The third is the accumulation of information amongst Project 2001 residents about houses sold off-register and reclaimed.

Table 7.3 shows the transaction-securing strategies of the participants arranged chronologically. The table demonstrates that the choice of transaction-securing strategies changed over the nine-year period. Except for two buyers, who were assisted by employers and started registration in 2002, all buyers used off-register transactions before 2005. Although off-register transactions still occurred, registration dominated as a transaction-securing strategy from 2005 onward, and buyers who previously conducted off-register transactions consulted a lawyer in an attempt to register.

The expiry of the pre-emptive sales clause (refer to section 6.4) caused a change in the transactional environment in approximately 2006. The year is not definite, because in addition to the different interpretations of the clause by lawyers (refer to section 6.5.6), the Deeds of Sale were signed and the title deeds transferred at different times (refer to section 6.4). Although the pre-emptive sales clause was introduced to restrict sales, in practice, it actually restricts the registration of sales. Upon the expiry of the clause, buyers had the opportunity to register. The removal of this barrier to registration is one reason why the incidence of registration seems to increase after 2005 (see Table 7.3).

Buyers	2001	2002	2003	2004	2005	2006	2007	2008	2009	
029	O					O+L				
076	O			O		L				*
035a		O								X
032		R								TD
024		R								
073			O						L	
064			O					L		
054b			O							
022a				O		L				
020				O						
072				O				R		
034				O				L		*
043					R					
026					R					
054a					R					TD
016						R				
055						R				TD
056						R				
023						O+R				
063						O		L		
067							O	O		*
031							R			TD
036							R			
038							R			TD
037							R			TD
035b							R			
018							R			TD
071							R			TD
033							R			TD
057								R		TD
022b								R		TD
062								R		TD
066								R		TD
021									R	TD
070									R	TD
039									O+L	

Legend

R Registration initiated

O Off-register transaction

L Lawyer consulted

TD Registration completed

\* Title deed not available

Employer involvement

X House reclaimed by seller

**Table 7.3: Transaction-securing strategies by participants in Project 2001: 2001 to 2009**

Although it may be argued that the expiry of the pre-emptive sales clause is the only reason for the increase in registration, this is not supported by the data. Only one buyer who conducted an off-register transaction did so because of the pre-emptive sales clause (020). Five other buyers wanted to register in 2003 or 2004 and had to conduct interim off-register transactions for reasons other than the pre-emptive sales clause (020, 022a, 034, 054b, 076) (e.g. the title deed was not available). Other buyers who attempted registration without a preceding off-register transaction (and excluding buyers who were assisted by employers) were affected by the pre-emptive sales clause, but did not realise the restriction applied until they consulted the lawyer (023, 026, 029, 043, 056, 066, 072). An alternative explanation may be that these buyers thought the clause had expired. However, all of these buyers reported that they were prompted to register by reasons other than the clause's expiry to register, such as information, experience with registration or reclaim fears. In fact, none of these buyers mentioned the pre-emptive sales clause in relation to their decision to register.

The adaptations that lawyers made in response to the pre-emptive sales clause also caused a change in the transactional environment (refer to section 6.5.6). These adaptations permitted buyers to start registration before the expiry of the pre-emptive sales clause. Without such adaptations, buyers would have been instructed by lawyers to return once the pre-emptive sales clause expired. Therefore, even though the buyers could only sign the Deed of Sale without proceeding to transfer, their experience with registration started sooner than the time barrier imposed by the pre-emptive sales clause and in turn, increased information about registration.

Information about reclaims and registration also increased as time passed. Reclaims started occurring within three years after the construction of the housing project (035a, 064, 076). Initially, buyers may have believed that affidavits would protect them against reclaims, for example, as discussed in section 7.5.2.2(a), participants 064 said that in 2003 when they bought a house, they believed an affidavit would prevent a reclaim. However, it is likely that buyers experienced reclaims even though they had signed affidavits with sellers. In 2005 and 2006, buyers started registering transactions (043, 056), or attempted to register transactions that they had previously secured using off-register transactions (022a, 029), because they wanted to

prevent reclaims. The reclaim of houses sold off-register continued; for example, the house participant 035 bought using an affidavit was reclaimed by the seller. From 2007 to 2009, eight buyers used registration (021, 022b, 033, 035b, 057, 066, 070, 071) and a further four buyers want to register off-register transactions (034, 054b, 063, 073), because they were concerned about reclaims.

At the time of the field work in 2009 and 2010, 21 of the 34 households who bought houses spoke about reclaims (refer to sections 7.5.2.2 (a) and (b)). All these participants believed that registration was the only transaction-securing strategy that would protect them against reclaims. Therefore, beliefs about reclaims and how to avert them changed from 2001 to 2010. Correspondingly, information about registration increased.

The changes in the transactional environment over time can be linked to the attitudinal, normative and control beliefs held by the buyers. For example, a buyer may have believed that an off-register transaction will provide permanent security, but at a later stage changed the belief to associate it with registration in response to information about reclaims (an attitudinal belief - refer to section 7.3.2(a)); neighbours, friends and family may initially have supported off-register transactions, but currently recommend registration and warn against off-register transactions (a normative belief - refer to section 7.4.1); and the control belief that the seller might attempt to reclaim the house may have become more prominent as information about reclaims accumulated in Project 2001 (refer to section 7.5.2.2(a) and (b)).

This discussion also confirms the development of the theoretical framework in Chapter 4. As stated in section 4.1, the transactional environment changes in response to changes in the loci of power and regulatory structures; this section demonstrated how and why these changes may occur.

### ***7.9.2 Time and transaction-securing strategies***

Time intervals also represent barriers or opportunities that influence individual transaction-securing behaviours. A time interval represents a barrier when a buyer has to wait to conduct a



transaction-securing strategy. This delay is particularly associated with factors that are conditional (e.g. the purchase price must be paid before registration can start; refer to section 7.5.2.2(c)), or factors that represent legal barriers (e.g. an unavailable title deed; refer to section 7.5.2.6(b)). A time interval may also present an opportunity to perform a transaction-securing behaviour. For example, if buyers negotiate to pay off the purchase price, transfer costs and municipal arrears (refer to section 7.5.1.2), they effectively obtain time and increase their capability to fulfil the conditions of a transaction-securing strategy.

However, whether a time interval represents a barrier or an opportunity, the delay may provide a space for the introduction of new control factors. These new control factors may result in the failure of the performance of the transaction-securing strategy and, in particular registration. A time delay between the off-register transaction and registration is intrinsic to interim off-register transactions. This time delay makes the buyer vulnerable to new control factors at a time when the buyer cannot easily extract himself or herself from a transaction. The result of time delays is illustrated by the status of transaction-securing strategies. Table 7.3 shows that none of the participants who initially conducted an off-register transaction has successfully completed registration. Three participants are waiting for the initial title to become available (034, 067, 076; refer to section 7.5.2.6(b)); in three cases the 50% shareholder is missing or refuses to sign for registration (022a, 029, 054b; refer to section 7.5.2.6(e)); in two transactions the seller is not the legal owner (063, 073; refer to section 7.5.2.6(d)); one transaction is stalled by a title deed problem (064; refer to section 7.5.2.6(b)); and one owner left Phumla (020; refer to section 7.5.2.6(f)). The time delay may also provide the seller an opportunity to attempt a reclaim (sections 7.5.2.2(b)).

For buyers who registered transactions, the time delay between signing the Deed of Sale and transfer ranged from two months (018) to four years (054a). Participant 054a had to wait three years for the pre-emptive sales clause to expire and an additional year to pay off her municipal arrears to obtain a rates clearance certificate. This delay does not always cause a problem; seven participants waited longer than six months and completed registration successfully. However the delay can compound an already vulnerable condition due to a threat of reclaim (026; sections

7.5.2.2(a) and (b)); eviction by the municipality (043; section 7.5.2.3(b)); or the mounting municipal arrears and, in turn, difficulty in obtaining a rates clearance certificate (054a; section 7.5.2.6 (c)).

Time underlies the transactional environment as argued in section 7.9.1 and time intervals also affect individual transaction-securing strategies (refer to section 7.9.2). Therefore, time is incorporated in the theoretical models. The next section summarises this chapter and presents the detailed models explaining why buyers decided to use or not use registration.

## **7.10 Summary**

The objective of this chapter was to explain why property buyers in Project 2001, a state-subsidised housing estate, decided to use or not use the land registration system.

Four transaction-securing behaviours were defined in terms of the theoretical framework:

- Transacting off-register when buying a house
- Registration after conducting off-register transaction & before consulting a lawyer
- Registration when buying a house and before consulting a lawyer
- Registration after consulting a lawyer and before transfer

Sections 7.2 to 7.5 defined the transaction-securing behaviours and presented the beliefs and factors according to the attitude towards behaviour, perceived subjective norm, and perceived and actual behavioural control constructs. The loci of power and regulatory structure configurations within the transitional environment that affect the evaluation of transaction-securing strategies were also described.

Furthermore, the chapter argued that the behavioural component is surrounded by the Buyer - Security/Threat - Loci of Power cycle, while the time underlies the transactional environment.

The next chapter will synthesize the findings and analysis in Chapters 6 and 7.

## Chapter Eight: **Project 2001: Synthesis and Discussion**

### **8.1 Introduction**

The objective of this chapter is to discuss and synthesise the findings in the Project 2001 case study. Section 6.2 established the context of the case study with a focus on the housing history, population changes and migration into Phumla, whereas section 6.4 described the status of the land records in Project 2001. Section 6.5 explained how buyers used transaction-securing strategies in Project 2001 and in Chapter 7 the transaction-securing behaviours were analysed to explain why buyers decided to use a particular transaction-securing behaviour.

This chapter first links the findings from the analysis of the transaction-securing behaviours with the housing history, population changes and migration in Phumla. This is followed by a discussion of the initial state of the Project 2001 land records in terms of the transaction-securing behaviours. This establishes how the Project 2001 transactional environment was shaped by these contextual characteristics.

The chapter continues by furthering the conceptualisation of the theory. It argues that the four transaction-securing behavioural models and, the time and Buyer - Security/Threat - Loci of Power cycle components in the transactional environment can be integrated to form a cohesive whole. This results in a transactional environment with an underlying time component and two embedded behavioural models surrounded by the Buyer - Security/Threat - Loci of Power cycle. The theoretical model is then illustrated with an example of a transaction-securing process in Project 2001.

The chapter concludes with a discussion of the study's findings in terms of those reported in the literature review. The theory developed in this study is also compared to existing applications of the Theory of Planned Behaviour in cadastral usage studies as discussed in the literature review.

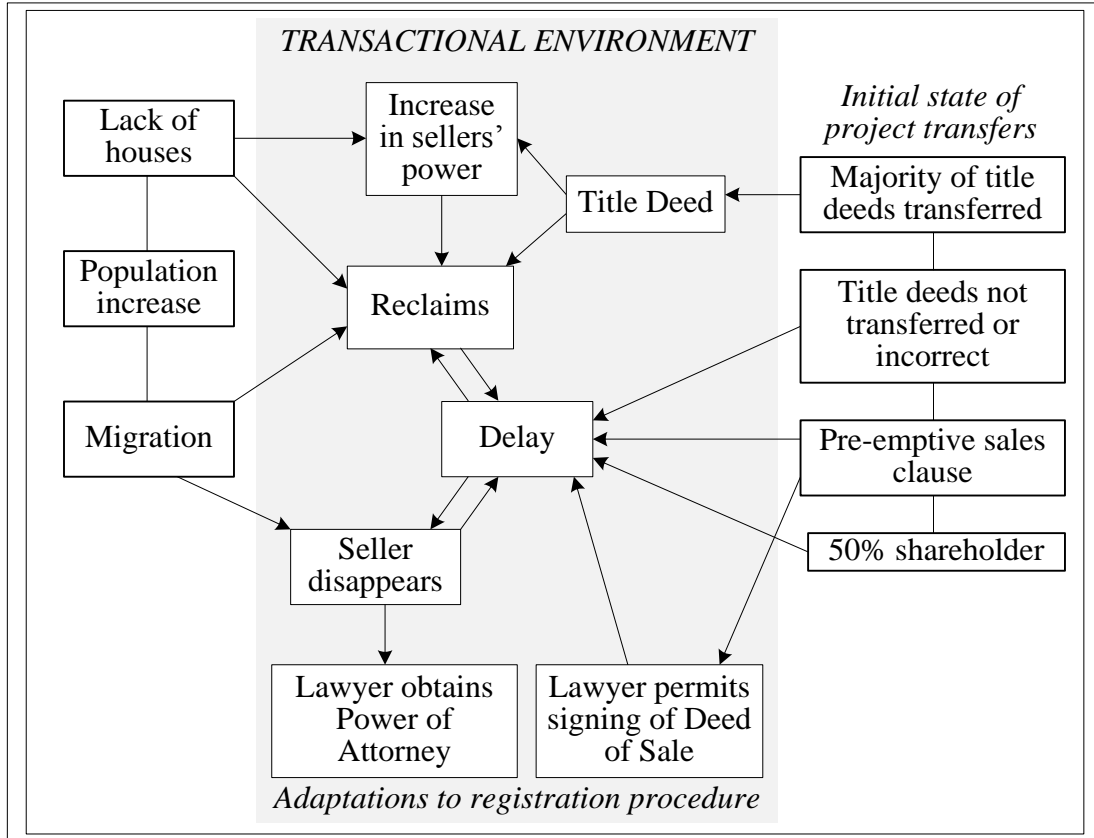
## **8.2 Pressure on housing, migration and transaction-securing strategies**

Section 6.2 described the housing history and population changes in Phumla, as well as the migratory behaviour of its residents. It was argued that there was always a lack of housing in Phumla (refer to section 6.2.1). This lack of housing was compounded by the increase in population through migration and the limited additions to the housing stock in the last twenty years. The movement of residents are not confined to in-migration, but also out-migration, and owners often sell due to their wish to relocate (refer to section 6.2.2).

The limited housing stock and migration have undoubtedly shaped the transactional environment of Project 2001 (see Figure 8.1). These forces have also, in turn, affected transaction-securing strategies in several ways:

- increasing the power of sellers over the transaction-securing strategy decisions;
- causing the reclaim of houses by returning off-register sellers, who struggle to find accommodation and then use the possession of the title deed to support the reclaim; and
- motivating lawyers to change registration procedures to accommodate the problem of the absentee seller who, having migrated, cannot be found to complete the registration process.

Sellers in Project 2001 hold a powerful position in transactions because they are the registered owners as recorded on the title deeds. This power is increased by the environmental conditions in Phumla. As discussed in section 6.5.2 it is difficult to find a house for purchase in Project 2001, as is plain in the attitudinal beliefs explaining the need of buyers to access houses, discussed in section 7.3.1. The combination of this need and the high degree of competition for houses may cause buyers to accept the demands of a seller, even if they have reservations, to ensure that they get a house. Therefore, sellers may use their powerful position to dictate the transaction-securing strategy (refer to section 7.4.2); or to insist on payment of the purchase price before initiating a transaction-securing strategy (refer to section 7.5.2.2(c) – both of which demands put the buyer at a distinct disadvantage.



**Figure 8.1: Contextual characteristics of Project 2001 that shaped the transactional environment**

Another phenomenon that may be related to the pressure on housing, as combined with the power imbued by possession of the title deed, is the reclaim of house by off-register sellers. On the one hand, an owner may decide to sell a house and reclaim it to make money, while retaining access to the house (sections 7.4.2). The seller may be successful in this scheme, because buyers desperately want to access housing. On the other hand, to speculate, the lack of housing in Phumla may motivate a seller to attempt a reclaim to access accommodation. Both scenarios are possible only because of the seller's possession of the title deed which, in turn, may depend on the initial state of the project transfers (see below).

Migration may be linked to the difficulty in locating a seller subsequent to the initial transaction and corresponding procedural adaptations made by lawyers. Approximately 60% of the sellers reportedly decided to sell their houses to move somewhere else, often the Eastern Cape (refer to

section 6.2.2). Thus, when an off-register buyer decides to register, it may be difficult to find the seller (refer to section 7.5.2.6(f)). Locating the seller is also a problem when the buyer and seller sign a Deed of Sale, but the seller leaves before he or she signs for the transfer proper.

In addition, as mentioned in section 6.5.6, buyers usually pay the full purchase price in cash during the off-register transaction, before initiating registration or once the Deed of Sale is signed. Because of this practice, the seller has little incentive to return to participate in registration. It thus becomes difficult to start or complete registration.

A response to the missing seller problem is the procedural adaptation made by lawyers. Lawyers started to get a Power of Attorney from the seller early in the registration process (refer to sections 6.5.6 and 7.5.2.4(a)). In the conventional registration process the lawyer also obtains a Power of Attorney, but this usually occurs as part of the preparation of the transfer documents (refer to section 2.2.1). Obtaining a Power of Attorney when the Deed of Sale is signed, or soon after, ensured that the lawyer can act on behalf of the seller and that the seller's presence is not required for the preparation of the transfer documents. Therefore this adaptation has influenced registration procedures within the transactional environment and supports the successful completion of registration.

There are other ways in which the pressure on housing and migration affect transaction-securing behaviour; for example the time limitation introduced by sellers upon announcing their wish to leave Phumla to the buyer (refer to section 7.5.2.2(d)), and buyers withholding a part of the purchase price to ensure that the seller returns to complete formal transfer (refer to section 7.5.2.1(c)). However, the main factors which have had the broadest impact on the Project 2001 transactional environment within the case study period were the increase in the seller's power, the possibility of reclaims, and the missing seller and the corresponding adaptation made by lawyers.

### **8.3 Project land records and transaction-securing strategies**

The initial state of the land records had four characteristics that affected both the transaction-securing strategies and the transactional environment in Project 2001 (see Figure 8.1). Firstly, by the end of 2004, 89% of the title deeds had been transferred to beneficiaries (refer to section 6.4). Secondly, not all of the title deeds were transferred as part of the project and there are mistakes in some title deeds (refer to section 7.5.2.6(b)). Thirdly, a pre-emptive sales clause was inserted into the title deeds (refer to section 7.5.2.6(a)). Fourthly, there may be some misunderstanding on the part of the beneficiaries of the implications of a 50% shareholder (refer to section 7.5.2.6(e)).

It was previously argued that the title deed is a power locus in the transactional environment (refer to sections 7.7 and 7.8). Not only does the title deed exert control in the evaluation of off-register transactions, but also in terms of the act of registration itself, which requires that the seller present a title deed. Most Project 2001 buyers also regarded the title deed as the most important evidence of ownership (refer to section 6.5.5). It is possible to infer that, if the majority of title deeds had not been transferred, the title deed would not have assumed such a powerful role in Project 2001. Instead residents might have found an alternative in an attempt to support their ownership. For example, sections 6.5.3 and 7.5.2.3(a) described the use of the municipal account as additional evidence to support transactions. It is possible to speculate that if residents did not have title deeds to support their ownership, they might have used the municipal account as an alternative official document.

Although the majority of beneficiaries did receive their title deeds during the first three years after the project had been completed, a number either did not, or the title deeds they received were incorrect (refer to section 6.4). If a seller does not have the title deed because it had not been transferred, or there is a mistake in the title deed, it is not possible to register a transaction until this problem is remedied (refer to section 2.2.1). This has a direct effect on the performance of registration or forces the seller and buyer to conduct an off-register transaction (refer to section 7.5.2.6(b)). However, title deed problems do not always stop buyers from consulting lawyers (refer to section 7.5.2.6(b)); and this may be understood in terms of the Buyer - Security/Threat - Loci of Power cycle. Buyers may decide that the combination of the title deed

and legal framework provides the strongest level of tenure security. Even though they cannot register the transaction without a title deed, they may attempt to gain interim legal support for the transaction; i.e. a legal contract specifying the terms of the transaction (refer to section 6.5.3).

The pre-emptive sales clause influenced transaction-securing behaviour in a number of ways. There are three direct influences. Firstly, the pre-emptive sales clause may prevent registration of sales for five years (refer to section 7.5.2.6(a)). Secondly, it may compel the buyer to buy property by means of an off-register transaction (refer to section 7.5.2.6(a)). Thirdly, it caused the lawyers to adapt the conventional registration process by permitting buyers and sellers to sign a Deed of Sale to protect the transaction until the pre-emptive sales clause expires and registration can occur (refer to section 7.5.2.4(a)).

The pre-emptive sales clause also had indirect effects, particularly associated with the delay introduced (by way of the lawyer's adaptation) between the Deed of Sale and the actual legal transfer. The problems experienced by buyers due to this delay may include:

- the buyer starts to fear a reclaim or the seller attempts an actual reclaim (refer to sections 7.5.2.2(a) and (b));
- the municipality threatens the buyer with eviction due to insufficient evidence of ownership (refer to section 7.5.2.3(b));
- the seller disappears (refer to section 7.5.2.6(f)); or
- the buyer accumulates municipal arrears and cannot get a rates clearance certificate when transfer is possible (refer to section 7.5.2.6(c)).

The fourth characteristic related to the Project 2001 land records is that beneficiaries may have misunderstood the role of the 50% undivided shareholder. As discussed in section 6.4, beneficiaries may not have understood that their spouse, co-habiting partner or even an adult dependant, as identified on the subsidy application form, becomes a 50% shareholder in the property and that the 50% shareholder must agree to any transaction involving the property. To speculate, alternative reasons for the 50% shareholder problem may be either, that it is not due to misunderstanding, but based on a cultural view of land ownership or that the seller attempted to



defraud the other shareholder. However, setting these possible interpretations aside, when the buyer and seller attempted registration, they may encounter a problem because the 50% shareholder either can not be found or refuses to sign the transfer documents unless he or she is paid a share of the purchase price (refer to section 7.5.2.6(e)). Although this negatively affects the buyer, it needs to be acknowledged that registration protects the rights of the 50% shareholder.

#### **8.4 A theoretical model explaining transaction-securing behaviour in Project 2001**

This section furthers the conceptualisation of the findings in Chapter 7. Section 7.7 presented four behavioural models associated with transactional environment configurations for each of the transaction-securing behaviours identified in section 7.2. However, additional components emerged from the analysis of the transaction-securing sequences as well as the effect of time on the transaction-securing strategies (refer to sections 7.8 and 7.9). These components included the underlying time component and the Buyer - Security/Threat - Loci of Power cycle. However, the models and additional components are not fully integrated and this section argues that it is possible to develop a cohesive theoretical model. This is achieved through:

- consolidating the time component in the transactional environment and the time element in the definition of the transaction-securing behaviours;
- acknowledging the relationships between the two transaction-securing behaviours;
- altering the loci of power and regulatory structure components in the transactional environment in response to the first two modifications;
- expanding the definition of loci of power; and
- refining the categorisation of the autonomy factors.

In section 4.4.2 it was argued, that based on the guidelines of the Theory of Planned Behaviour, it is necessary to define the transaction-securing behaviours in terms of action and time. On this basis, the behaviours used in the analysis were defined in this way (refer to section 7.2). These definitions proved useful in the analysis and increased understanding of the transaction-securing decisions made by buyers. However, the argument here is that time emerged as a separate component in the analysis and this time component can incorporate the time element of the

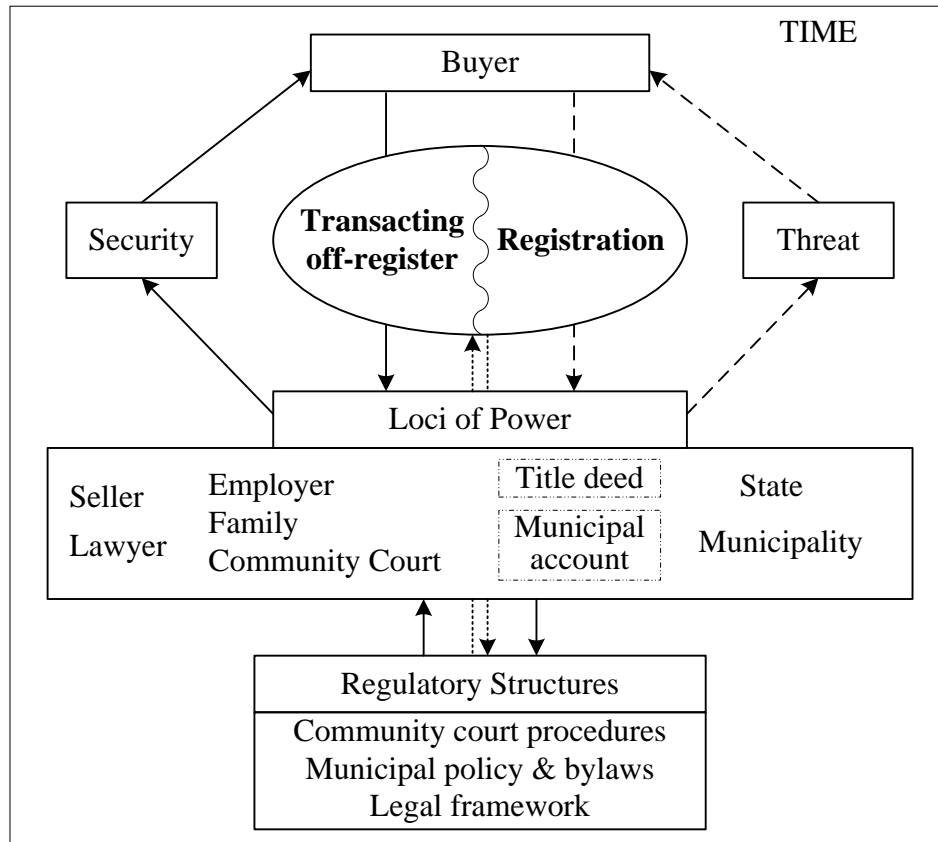
transaction-securing behaviours. Thus, the four behaviours can be conflated into two models describing the behaviours in terms of action; that is, transacting off-register and registration (see Figures 8.3 and 8.4).

The change in the definitions of behaviour necessitates a change in the description of time in the transactional environment so that the time component can be clarified by describing it in terms of two interdependent perspectives. Therefore time is regarded, not only as signifying intervals between a linear progression of successive or cumulative events internal or external to the transactional environment that may affect all buyers, but also as intervals denoted by events that are particular to each individual buyer's transaction-securing process. The first perspective includes, for example, the change in information amongst Project 2001 residents about the reclaim of houses sold off-register (refer to section 7.9.1), or the adaptation introduced by lawyers to assist buyers in registration based on their experiences with other buyers (refer to section 7.9.1). The second perspective is associated with individual transactions, for example, delays in transaction-securing processes, such as paying off the municipal arrears (refer to sections 7.5.2.6(c) and 7.9.2); or events during transaction-securing processes, such as consulting a lawyer (refer to section 7.2).

It is possible to change the transactional environment even further by recognising that the two behaviours are not mutually independent and that both behaviours are embedded within the transactional environment (see Figure 8.2). Three findings from Chapter 7 support this argument.

Firstly, beliefs within the evaluation of the two behaviours may be complementary. For example, an off-register transaction has no apparent costs, whereas registration involves transfer costs (refer to section 7.5.1.2). Secondly, beliefs supporting the performance of one behaviour may contain the implicit rejection of the other behaviour. For example, if a buyer decides to register, because he fears that the seller might reclaim the house if they use an off-register transaction (refer to section 7.5.2.2(a)), the negative evaluation of off-register transactions is implicit. Thirdly, the Buyer - Security/Threat - Loci of Power cycle showed that transaction-securing behaviours may be directly connected in the case of a transaction-securing sequence, or

indirectly connected when knowledge of the experiences of others affects the evaluations of buyers (refer to section 7.8). In these ways, the “transacting off-register” and “registration” behaviours are partly complementary and mutually influential.



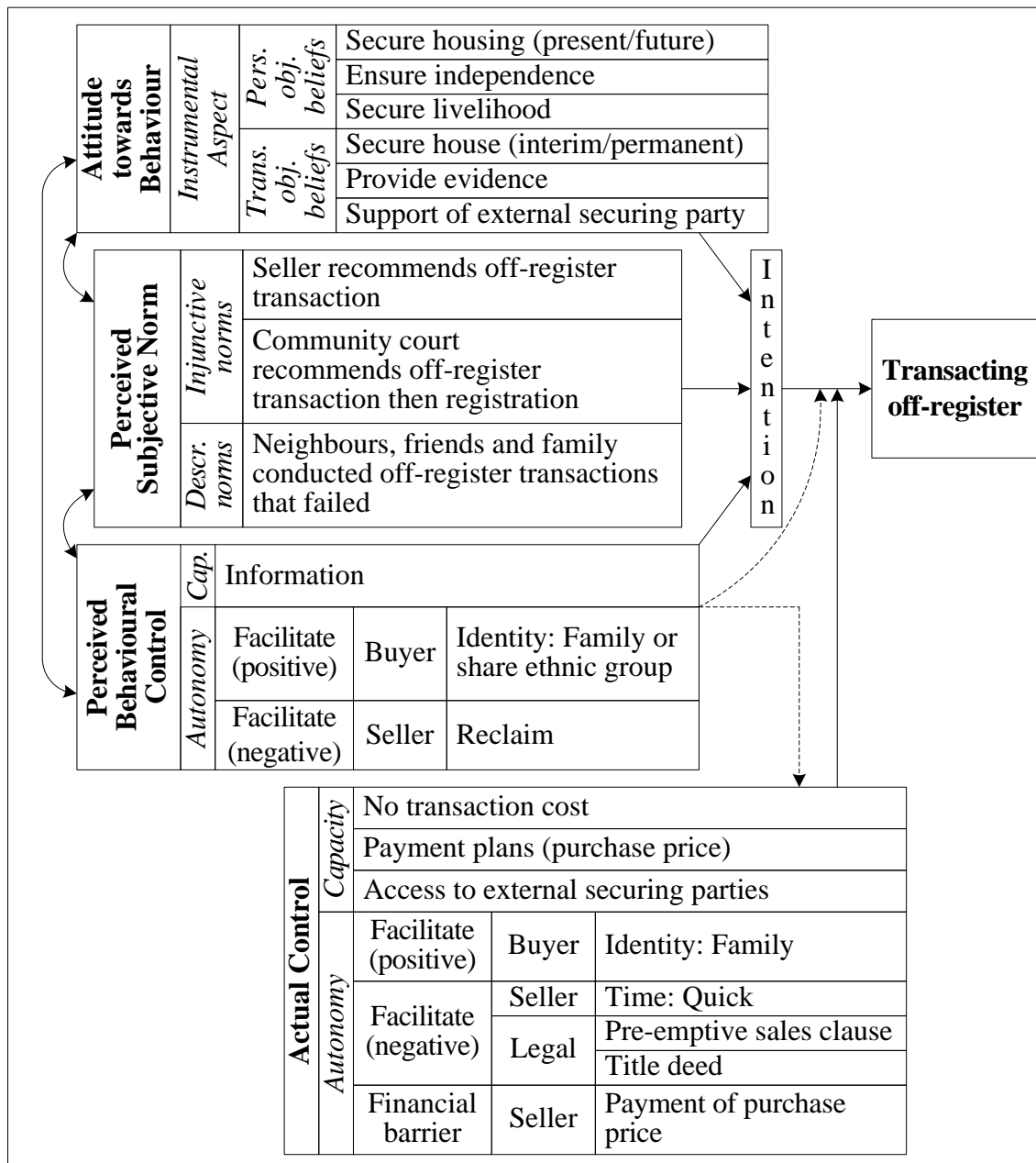
**Figure 8.2: Project 2001 transactional environment with conceptual changes**

The addition of the Buyer - Security/Threat - Loci of Power cycle results in another change to the conception of the transactional environment. In all of the transactional environment configurations, the buyer was categorised with the other loci of power. However, the Buyer - Security/Threat - Loci of Power cycle emphasised the role of the buyer in the evaluations. Therefore including the buyer in the loci of power component is redundant. Separating the buyer from the other loci of power also serves to indicate that the theory is developed from the perspective of the buyer.

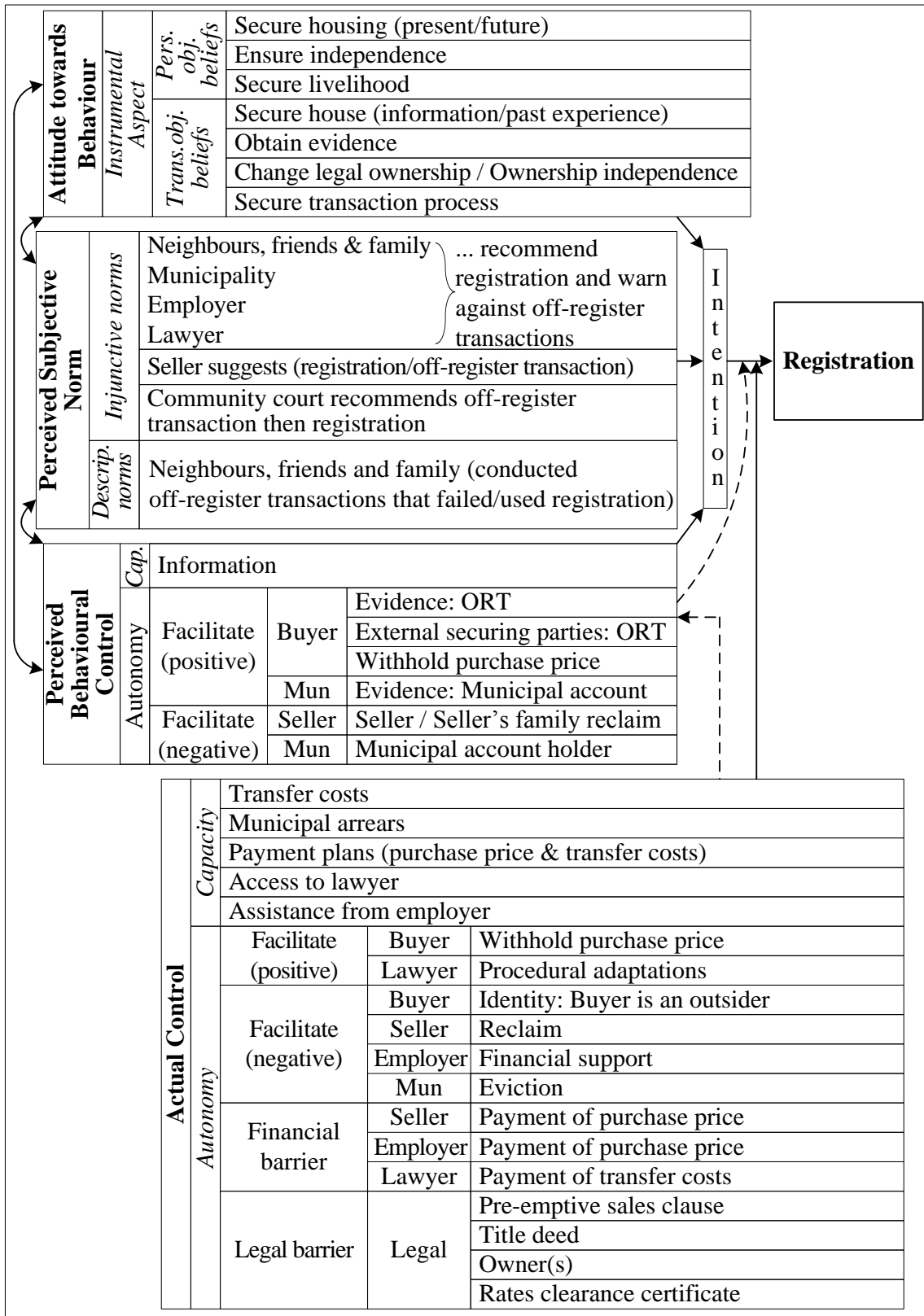
The analysis showed that the title deed and municipal account are perceived as loci of power by the buyers, since they believe that these artefacts exert control over the transaction-securing strategies (refer to section 7.7). Therefore the definition of loci of power is changed to individuals, groups, organisations and/or artefacts that exert control over transaction-securing behaviours.

The final change to the transactional environment is in response to the arguments above. Since the two transactional behaviours are interlinked, it is necessary to recognise that the loci of power and regulatory structures are also present at the same time in the transactional environment. Therefore, the four transactional environment configurations (refer to section 7.7) are discarded in favour of one that includes all the loci of power and regulatory structures. This also affirms that buyers evaluate transaction-securing strategies within the same context: Project 2001 and the broader institutional, legal and social environment.

The alteration of the transactional environment changes the behavioural models. The behavioural model that explains the “transacting off-register” behaviour, illustrated in Figure 8.3, is the same as the original model explaining “transacting off-register when buying a house” with some simplification for illustrative purposes. The model that explains the evaluation of registration (see Figure 8.4) represents a combination of all of the beliefs used by buyers when they decide to register, as illustrated in Figures 7.23 to 7.26.



**Figure 8.3: Transacting off-register behavioural model**



**Figure 8.4: Registration behavioural model**

In addition, the autonomy control beliefs in both models are further categorised to increase the understanding of these factors. The four categories are: facilitate (positive), facilitate (negative), financial barriers and legal barriers. The buyer may overcome financial barriers with money, whereas legal barriers are introduced by the legal requirements of registration. The facilitating factors need more explanation.

A facilitating factor can be positive or negative from the perspective of the buyer. If buyers believe that a factor assists them in the performance of a transaction-securing behaviour it is positive. However, if the buyers believe that a factor is forcing them to perform a transaction-securing behaviour, it is categorised as negative.

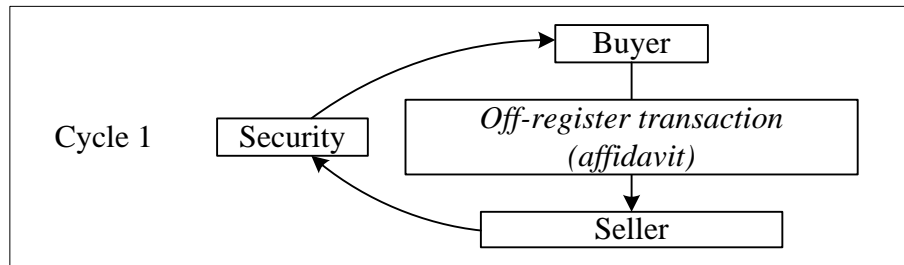
The autonomy control factors were linked to loci of power in the initial categorisation in section 7.5.2. By dividing the facilitating control factors into positive and negative, the control of the buyer over the performance of transaction-securing behaviours is clarified. Considering Figures 8.3 and 8.4, it can be seen that positive facilitating control factors are linked to the buyer, but also other loci of power, such as the lawyer or municipality. For example, the buyer may believe that the performance of registration is facilitated due to adaptations made by lawyers to registration procedures. Negative facilitating control factors are related to the buyer, seller, employers and the municipality. For example, a negative facilitating factor may be the buyers' belief that registration is a condition of obtaining financing from an employer. The legal framework may also introduce negative facilitating control factors; for example, if the title deed is not available, it may facilitate the performance of an off-register transaction, since registration cannot occur without the title deed.

The modified transactional environment and models are illustrated in the following section with an example from two participants who were selected because they attempted more than one transaction-securing strategy and encountered complicated issues in their transaction-securing process.

### 8.5 Mzuvikile and Lungiswa: An example

Mzuvikile and Lungiswa (pseudonyms for participants 064) are a married couple who used an off-register transaction to secure a house in 2003 and, after five years, attempted to register. The data in the interview were corroborated by the transfer records, municipal documents and letters from the lawyer they retained to facilitate the transfer.

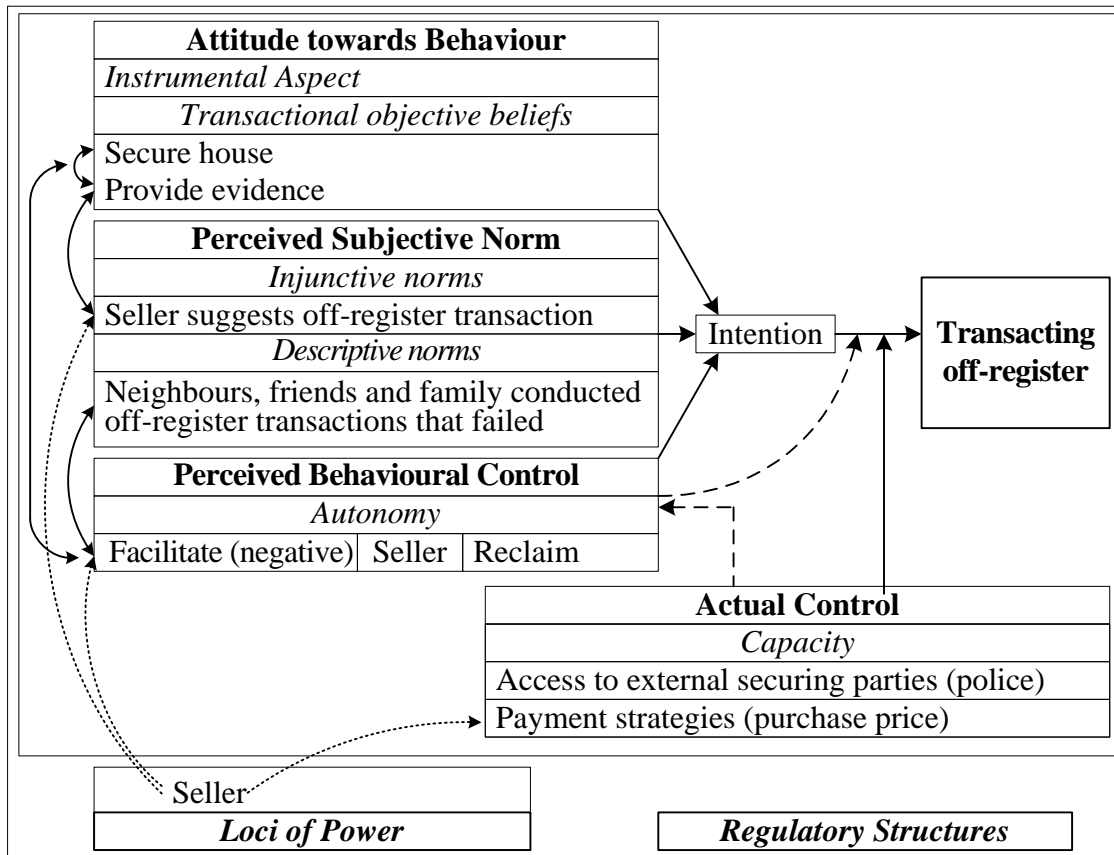
Mzuvikile and Lungiswa’s evaluation of an off-register transaction in 2003 was influenced mainly by the seller’s recommendation that they should conduct an off-register transaction using an affidavit. According to Mzuvikile and Lungiswa, the seller said that the affidavit will prove that they gave him the money, and they themselves felt it would prevent a reclaim. In terms of the Buyer – Security/Threat – Loci of power cycle, the affidavit created a relationship between them and the seller that secured the transaction (see Figure 8.5).



**Figure 8.5: Mzuvikile and Lungiswa: Buyer-Security/Threat-Loci of Power cycle 1**

In conjunction with the Buyer – Security/Threat – Loci of power cycle, Mzuvikile and Lungiswa’s decision can be further explained using the behavioural model for “transacting off-register” (see Figure 8.6). The model illustrates that at this initial stage, Mzuvikile and Lungiswa believed that the affidavit would provide evidence that would secure the house permanently and prevent a reclaim attempt by the buyer. They were aware of the risks associated with off-register transactions, because they had observed reclaims in Project 2001. They also believed that the police would assist them with the affidavit. In addition, the decision to transact off-register was encouraged by the flexible payment plan included in the agreement. This improved Mzuvikile and Lungiswa’s capability of completing the transaction-securing strategy, since they had more time to fulfil the financial component of the sales agreement.





**Figure 8.6: Mzuvikile and Lungiswa’s evaluation of transacting off-register**

Mzuvikile and Lungiswa then transacted with the seller. As Lungiswa explained: “We go there in the police station with [the seller] and that guy tell the police, ‘I have a house there in [Project 2001], that house I sell it to [Mzuvikile and Lungiswa], with this money, R12,000’, so we agree”.

After signing the affidavit, the seller moved to Cape Town and Mzuvikile and Lungiswa continued depositing payments into the seller’s bank account. Then, in 2006, the seller died. Mzuvikile and Lungiswa became concerned about their tenure security because “the house is calling for that guy . . . the house belongs to that guy who passed away, but when the [municipal accounts] come here, [it’s] calling for the other guy there in [area within Project 2001]”.

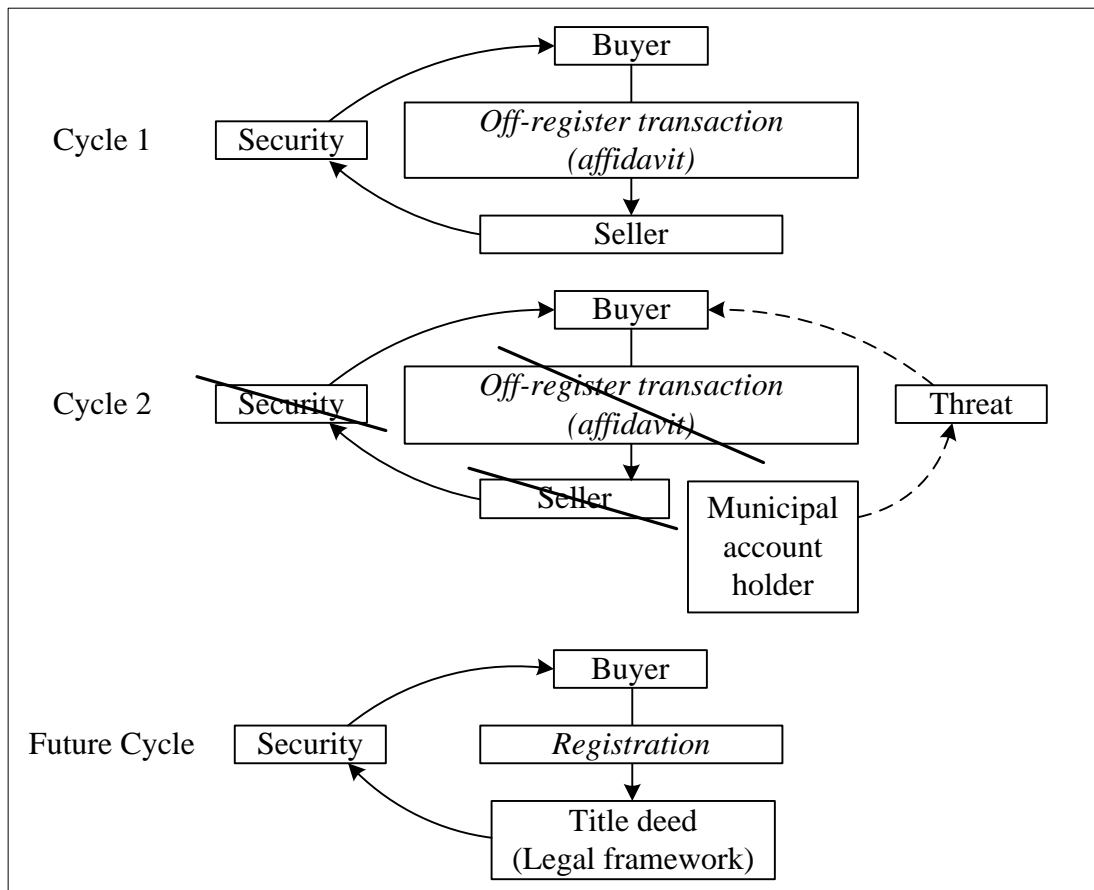
This is a complicating issue related to an error in the project transfers. The municipal account was not in the name of the seller, but that of another beneficiary (“the other guy”). This beneficiary received a municipal account in the name of a second beneficiary. The second

beneficiary received the seller's municipal account. This confusion is also replicated in the title deeds, but discovered only once Mzuvikile and Lungiswa consulted a lawyer.

To speculate, before the seller's death, he had the power to intervene if the municipal account holder claimed ownership rights through the incorrect title deed. This is because the seller was still recognised by the municipality as a legitimate state-subsidy beneficiary in Project 2001. This recognition also indirectly protected the off-register transaction from a claim by the municipal account holder.

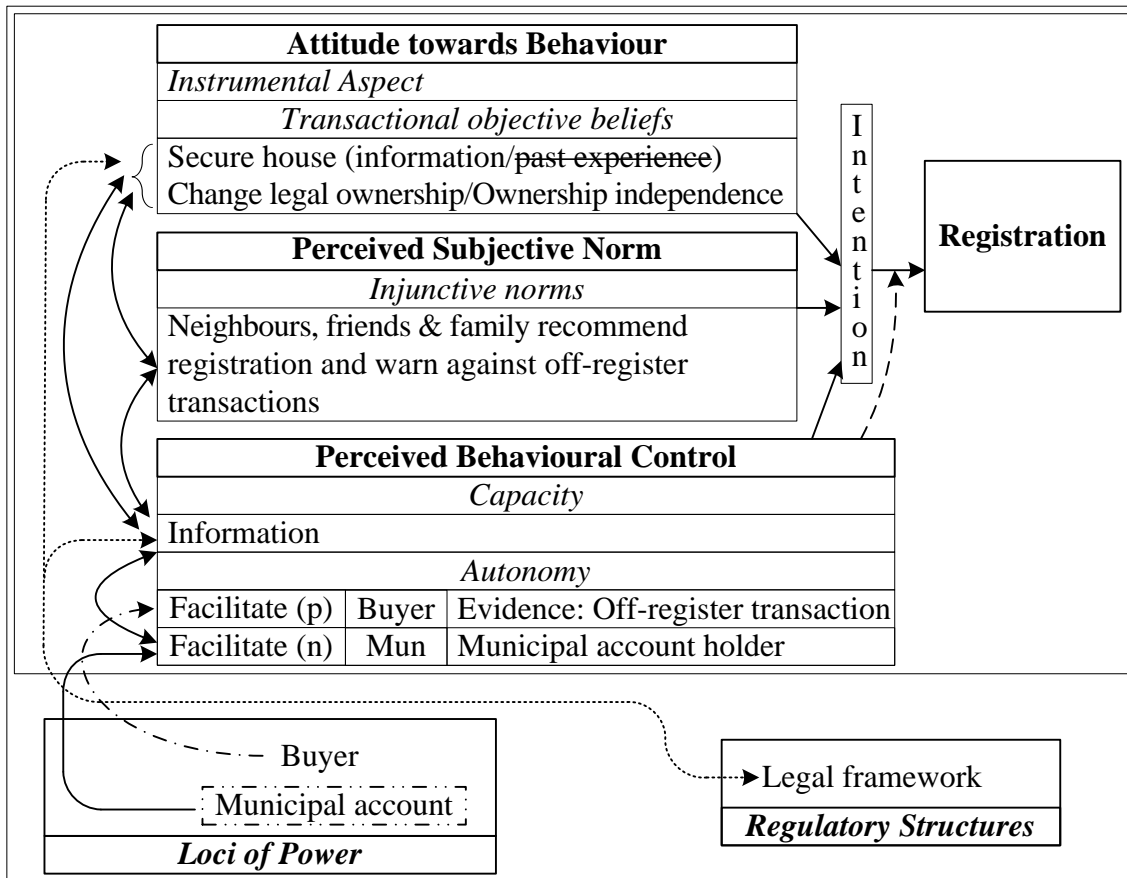
However, these two issues, the seller's death and the incorrect name on the municipal account, caused Mzuvikile and Lungiswa to consider registration as a possible way of resolving their doubts about their ownership rights.

The decision to evaluate registration is explained by the Buyer - Security/Threat - Loci of Power cycle (see Figure 8.7). The affidavit created a relationship between Mzuvikile and Lungiswa and the seller that secured the transaction (Cycle 1). When the seller died, the relationship was destroyed from Mzuvikile and Lungiswa's perspective (Cycle 2). Mzuvikile and Lungiswa became concerned that the municipal account holder might claim the house, since the seller was not available to intercede on their behalf. This prompted them to attempt registration to restore the Buyer-Security-Loci of Power balance (Future Cycle).



**Figure 8.7: Mzuvikile and Lungiswa: Buyer-Security/Threat-Loci of Power cycles 1, 2 and future**

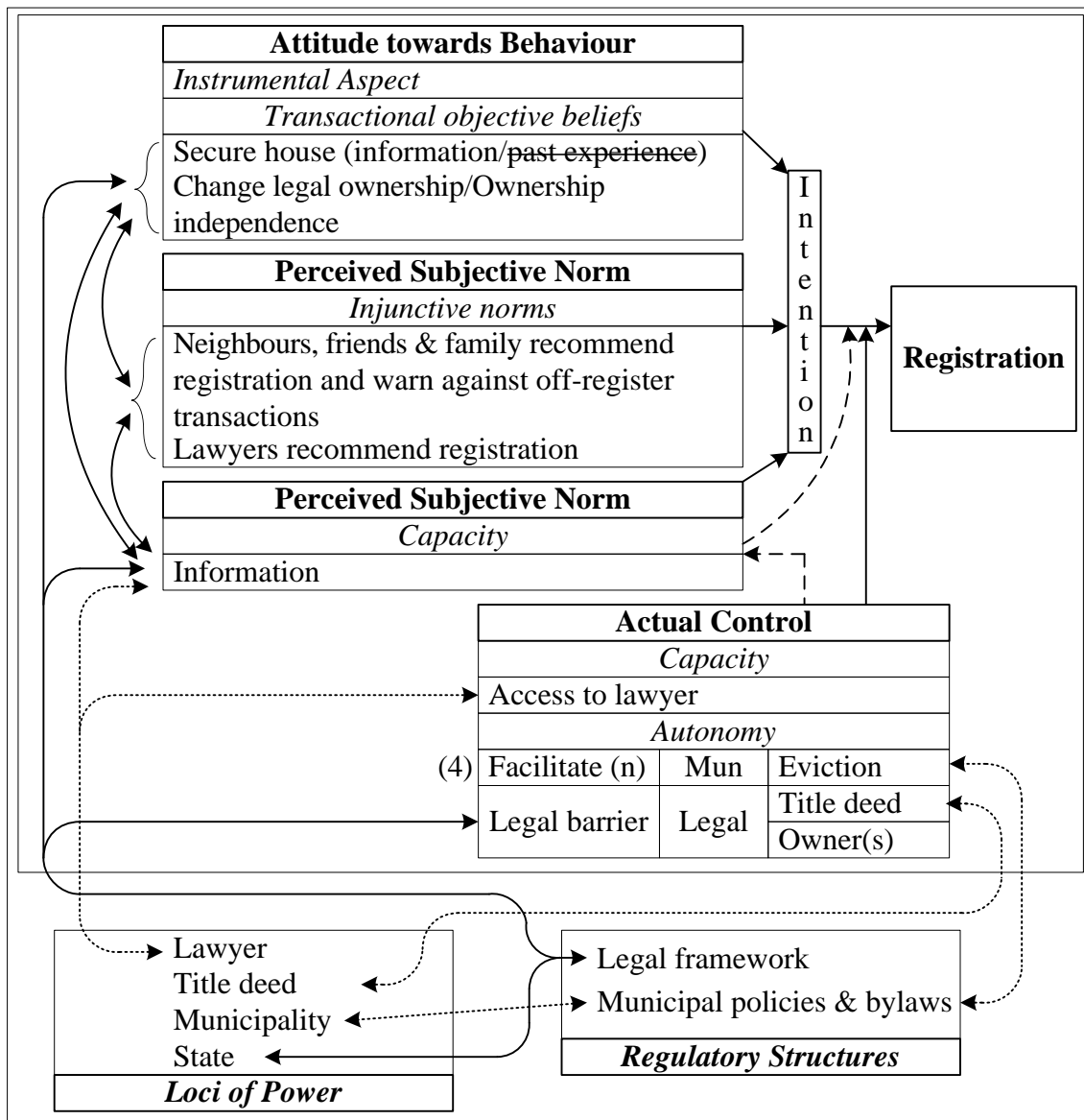
Mzuvikile and Lungiswa’s evaluation of registration is illustrated in Figure 8.8. The concern that the municipal account holder might attempt to reclaim the house, as identified from the Buyer - Security/Threat - Loci of Power cycle, was introduced as a perceived control factor in the evaluation.



**Figure 8.8: Mzuvikile and Lungiswa’s evaluation of registration after conducting the off-register transaction**

The information that Mzuvikile and Lungiswa had about registration, at the time they evaluated it, was reflected in their transactional objective belief that registration changes the legal ownership (“we want to change the name”) and secures the house for them. Mzuvikile and Lungiswa obtained the information from neighbours, friends and family who approved of registration. Mzuvikile and Lungiswa also believed that the affidavit and the evidentiary documents (bank receipts) from the off-register transaction would assist in registration. As Mzuvikile said, “Fortunately we got all of that papers and the [bank] receipts of all that”. The evidence from the off-register transaction acted as a positive facilitating control factor in the evaluation. However, the factor is categorised here as a perceived control – and not actual - since the documents would not necessarily facilitate registration.

After positively evaluating registration Mzuvikile and Lungiswa consulted a lawyer in 2008. This led to the re-evaluation of registration (see Figure 8.9). The transactional objective beliefs from the previous evaluation of registration were retained, as well as the normative belief that neighbours, friends and family approve of registration.



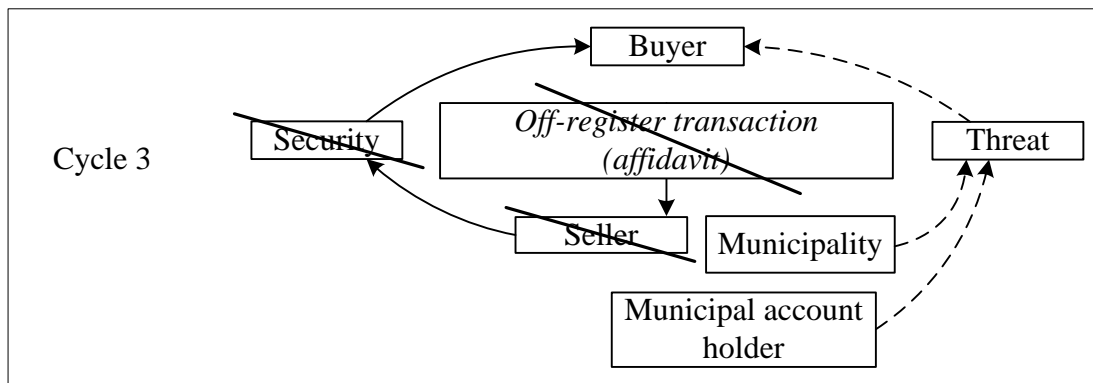
**Figure 8.9: Mzuvikile and Lungiswa’s evaluation of registration after consulting the lawyer**

The consultation with the lawyer identified two important control factors. Firstly, that registration could not occur with an incorrect title deed, the impact which was compounded by

the second control factor, the death of the seller, since the owner must be available for registration. Three steps were required to register the transaction. First, the estate of the seller needed to be resolved. Second, three transfers were required to correct the incorrect project transfers. This required the cooperation of the other two owners as well as the heir of the seller. Third, the seller's heir would have to agree to transfer the property to Mzuvikile and Lungiswa. The transfer thus represented a costly exercise, in terms of logistics, transfer costs and time commitment; Mzuvikile and Lungiswa were uncertain about how to proceed.

At the time of the interview in 2009, Mzuvikile and Lungiswa still hoped to register. However they also considered selling the house, not because of the registration problem, but because they had lost their jobs and they had better support networks in the Eastern Cape.

Then during a debt management exercise in 2010, the municipality threatened to evict Mzuvikile and Lungiswa, due to the outstanding municipal arrears (indicated by (4) in Figure 8.9; also see Figure 8.10), and because they are not the registered owners of the property. Mzuvikile and Lungiswa returned to the lawyer, but he only confirmed what he had told them in the previous consultation. This was the last event recorded during the field work.



**Figure 8.10: Mzuvikile and Lungiswa: Buyer-Security/Threat-Loci of Power cycle 3**

Mzuvikile and Lungiswa's transaction-securing process is complicated since it involves not only the death of the off-register seller, but also confusion surrounding the registered ownership. However, despite these complications the theoretical model as revised, explains their transaction-securing decisions. This discussion also demonstrates how consecutive transaction-securing

strategies affect each other and how the same transaction-securing behaviour is evaluated at different times. In addition, the example shows how the various beliefs, factors, loci of power and regulatory structures interrelate. Furthermore, the Buyer - Security/Threat - Loci of Power cycle provides insight into why a buyer decides to evaluate or re-evaluate a given transaction-securing behaviour.

The following section compares the findings and theory with existing research drawn from the literature.

## **8.6 Comparison with existing research**

Chapter 3 discussed the causal factors associated with registration usage as identified in land market and land tenure studies. This section will discuss these factors in relation to the findings in Chapter 7.

The causal factor most often identified as explaining registration-related behaviour in the land market studies was the cost of registration. The arguments in the literature suggest that buyers are dissuaded from using registration because they cannot afford the transfer costs (Shisaka 2003a, Nell *et al.* 2004, Marx 2007b, ULM 2007, Mooya and Cloete 2007, Marx and Rubin 2008a, Smit 2008, Payne *et al.* 2009, Lemanski 2010). The findings in Project 2001 indicated that transfer costs influence transaction-securing behaviours, but also expands on their role (refer to section 7.5.1.2). Firstly, buyers may decide not to register because of their inability (or refusal) to pay transfer costs, but they may also decide to delay registration until they can afford the costs. Secondly, the burden of the transfer costs may be eased through payment plans. Thirdly, for Project 2001 buyers the expense of paying the seller's municipality arrears may be a more significant cost compared to the transfer costs. Fourthly, buyers may decide that although the cost of registration is expensive, they are prepared to pay it to avoid a reclaim by the seller. It is, however, important to note that, except for one buyer, the Project 2001 buyers discussed transfer cost only before the increase in the lawyers' recommended tariffs in 2009. Therefore, in the future, it is possible that increased transfer costs may represent a greater financial burden.

According to the review of the land market studies the second causal factor was the restrictive sales clause. The literature stated that the restrictive sales clause encourages off-register transactions, because it prevents registration (Shisaka 2003a, Nell *et al.* 2004, Marx and Rubin 2008a, Payne *et al.* 2009, Vorster and Tolken 2009, Lemanski 2010). It was argued in section 6.4 that, in practice, the pre-emptive sales clause used in Project 2001 is similar to the restrictive sales clause. The findings in Project 2001 confirmed that the restriction on sales affected registration (refer to section 7.5.2.6(a)). However, in the one case where a Project 2001 buyer decided to use an off-register transaction because of the pre-emptive sales clause, it was an interim measure until she could register. The pre-emptive sales clause had a greater impact on transactions where the buyers decided to register, but only found out about the implications of the clause upon consulting a lawyer. Generally the lawyers assisted buyers by using an adaption to the registration procedure which allowed the transacting parties to sign a Deed of Sale. In these cases, the pre-emptive sales clause caused a delay between the Deed of Sale and the transfer of the title deed. Although some buyers successfully completed registration despite the delay, other buyers encountered other problems; e.g. threats to the transaction, which may prevent registration (refer to section 8.3).

The land market studies also suggested that it is difficult for buyers to register transactions because they do not have access to legal services (Marx 2007b, Smit 2008, ULM 2007, Marx and Rubin 2008a, Payne *et al.* 2009, Lemanski 2010). This study shows that buyers did have access to lawyers, although different levels of access may be linked to payment of the transfer costs (refer to sections 7.5.1.1 and 7.5.2.4(b)). However, it is possible that access is linked to context. The market studies that identified access as a barrier to registration were conducted in metropolitan areas, whereas Project 2001 is located in a rural town. In metropolitan areas, state-subsidised housing estates may be far from legal service centres; by comparison, there are many lawyers' firms close to Phumla.

Three land market studies suggested that buyers decided to use off-register transactions because registration takes too long (Marx and Rubin 2008a, Payne *et al.* 2009, Vorster and Tolken 2009). Two buyers in Project 2001 did decide to use off-register transactions because the seller had to



leave the area urgently (refer to section 7.5.2.2(d)). However in the one case, the seller promised to return for registration; and, in both cases, the buyer and seller did attempt to register the transaction at a later stage. However, buyers may also believe that registration can occur quickly, since lawyers reported that some buyers who approached them also expected registration to be completed within a short time. In response to this time restriction, a number of lawyers adapted procedures by obtaining a Power of Attorney to act for the seller and this decreased the time the seller is required to be physically present.

Another causal link identified in the land market studies is that registration cannot occur without a title deed and that absence of a title deed may result in an off-register transaction (Marx 2007a, Smit 2008, ULM 2007). This was confirmed in Project 2001 (refer to section 7.5.2.6(b)), but the findings also indicate that a lack of a title deed does not always stop a buyer from attempting registration or at least obtaining legal protection (refer to section 8.3). Also, instead of disregarding registration entirely, buyers may decide to use an interim off-register transaction to secure the transaction until the title deed becomes available.

Three land markets studies also indicated that a lack of education and information about registration as well as ignorance of registration may result in an off-register transaction (Shisaka 2003a, Nell *et al.* 2004, Vorster and Tolken 2009). Buyers in Project 2001 had information about off-register transactions and registration; however it is difficult to determine what information buyers had and at what time (refer to section 7.5.1.3). Findings herein show that the information that buyers had about registration changed over time, varied in depth, and increased after the buyer consulted a lawyer. However, in this study, the combination of the buyers' knowledge that they needed to go to a lawyer to "change the title deed", and the awareness that a house sold off-register can be reclaimed, was enough information to support the decision to register.

Paradoxically, it is possible to speculate that, if the buyers had complete information about the registration process and all that it entailed, they might not have attempted registration. To illustrate, buyers usually found out about costs or legal barriers when they consulted the lawyer, often making registration seem very difficult. Therefore it is possible that, if they had known about the costs or barriers, they may have been dissuaded from attempting registration.

The land market studies also argued that the registration system is too complex, thereby encouraging off-register transactions (Marx 2007b, Smit 2008, ULM 2007, Marx and Rubin 2008a, Payne *et al.* 2009). The studies did not specify where the complexity lies, but it may be assumed that it relates to the legislation that governs registration. This study showed that buyers only encountered this complexity once they consulted a lawyer, who then assisted them in navigating the legal difficulties.

Another legal requirement of registration is the rates clearance certificate. The land market studies suggested that registration is affected because buyers find it difficult to obtain the certificates (Nell 2007, Smit 2008, ULM 2007). Rates clearance certificates were also identified as a barrier to registration in this study (refer to section 7.5.2.6(c)); however it was also found that buyers may use payment plans introduced by lawyers to pay the municipal arrears, obtain the certificate and complete registration successfully.

One market study argued that when employers assist with transactions, registration successfully occurred, because the employers are aware of the advantages of registration (Lemanski 2010). This study acknowledges that employers provide information and assist with registration (refer to sections 7.5.1.3 and 7.5.1.4), but also notes that employers may exert control over the transaction-securing strategy decision if they insist that registration occurs as a condition of their financial support (refer to section 7.5.2.5).

It can be seen that the land market studies exclusively identified control factors. In addition, the land market studies did not identify the changes in the transactional environment that affect transaction-securing behaviour, e.g. adaptations made by lawyers to the registration procedure. Another factor that had a significant impact in Project 2001 is the fear of reclaims; however, the land market studies did not identify a relationship between reclaims and registration.

The land tenure studies discussed in Chapter 3 argued that a disconnection between the *de facto* and *de jure* processes may result in off-register transactions (Manona 1987, Barry 1999, Kingwell 2008, Marx and Rubin 2008b). One example of such a disconnect is that customary

practices may recognise a different owner or rights holder than official systems (Manona 1987, Barry 1999, Kingwell 2008, Marx and Rubin 2008b). In Project 2001 the closest comparison is with the transactions with which the community court assisted. In section 6.5.4 it was noted that the community court may identify an owner that would not be legally recognised as such but, from their perspective, is the “real owner”. It may also be argued that the belief that the seller may sell without the permission of the 50% shareholder (refer to section 7.5.2.6(e)) is based on *de facto* processes; for example, that the male spouse or partner can sell a house without permission from his wife or female partner. However, this is speculation.

Other factors noted in land tenure studies that may affect registration include dysfunctional, overlapping or corrupt administrative systems (Marx and Rubin 2008b). These factors were not identified in Project 2001 in relation to off-register or registered transactions conducted by Project 2001 buyers, although it could be argued that the community court procedures represents an overlapping administrative system.

The next section will compare the theory developed in this study with other applications of the Theory of Planned Behaviour in cadastral research.

### **8.7 Comparison of theory with previous applications of the Theory of Planned Behaviour in cadastral research**

In Chapter 4 two theories were reviewed that used Theory of Planned Behaviour (TPB) in cadastral research; that is, a cadastral system usage theory (Barry 2005) and the three-stage theory (Barry *et al.* 2012).

There are similarities and differences between the two theories (Barry 2005; Barry *et al.* 2012) and the theory developed in this study. The similarities are largely related to the use of the TPB. Although there are differences in perspective, the theories all consider the attitudinal, normative and control beliefs in relation to land registration usage. The theory in both this study and the three-stage theory agree that registration behaviour and its consequences cause dynamic changes in the context within which it occurs (refer to sections 7.9 and 8.2).

The main difference between the theories is that the theory in this study emphasises the role of the loci of power. It was argued that greater understanding of the buyers' decisions is possible if a Buyer-Security-Threat-Loci of Power cycle is added to the evaluation of attitudinal, normative and control beliefs. The cycle not only explains why buyers decide to evaluate a particular strategy, but also why buyers would attempt a strategy even if there are control factors preventing the successful completion of the strategy. The cycle also shows that the loci of power have the potential to both secure, and threaten the security of, a transaction. Also, in this study the autonomy factors that affect control beliefs are linked to the loci of power. By identifying the perceived and actual controls, as well as the associated loci of power, it is easier to determine how land registration usage is affected.

Although the theory in the current study overlaps with the cadastral system usage theory (Barry 2005) and the three-stage theory (Barry *et al.* 2012), this study presents a distinct perspective that may increase the understanding of land registration usage.

## **8.8 Summary**

This chapter synthesised and discussed the findings and theory in the Project 2001 case study.

First, the chapter discussed how the lack of housing, migration and the initial state of the land records shaped the Project 2001 transactional environment. These contextual characteristics of Project 2001 increased the power of sellers, may be associated with reclaims and caused lawyers to adapt the registration procedures. The initial state of the land records created barriers to registration because some of the title deeds had not yet been transferred to beneficiaries or were incorrect. The use of 50% shareholders in the project transfers also created a legal barrier for buyers, since a house may not be sold without the participation of the 50% shareholder.

The chapter continued by integrating the four behavioural models developed in Chapter 7 and the time and Buyer - Security/Threat - Loci of Power cycle components. The integration permitted the time element of the behavioural definitions to be incorporated in the time component of the transactional environment. This resulted in two behavioural models explaining the “transacting

off-register” and “registration” behaviours. The time component was also described in terms of two interdependent perspectives: time as associated with the transactional environment in its entirety, and time as it relates to individual behaviours.

Furthermore, it was argued that the two behavioural models are interlinked and present within the transactional environment at the same time. This also meant that the transactional environment configurations associated with each of the four behaviours are discarded in favour of one transactional environment that includes all of the regulatory structures and loci of power.

All of these changes resulted in a transactional environment with loci of power and regulatory structure components and an underlying time component. Within the transactional environment, there are two embedded behavioural models surrounded by the Buyer - Security/Threat - Loci of Power cycle.

The two behavioural models explaining the “transacting off-register” and “registration” behaviours largely remained the same, although the registration behavioural model represented a collection of all of the beliefs used by buyers when evaluating registration, including after conducting an off-register transaction, and before and after consulting a lawyer. One change in both behavioural models was the additional categorisation of the autonomy control factors. These factors were categorised as facilitate (positive), facilitate (negative), financial and legal barriers. It was argued that the additional categorisation clarifies the influence of the control factors on the transaction-securing behaviours. The application of the theoretical model was then demonstrated by reference to a transaction-securing process in Project 2001.

This was followed by a comparison between this study’s findings and those identified in the land market and land tenure literature. It was demonstrated that this study identified similar causal factors, and expanded the understanding of these factors within the context of Project 2001.

This study’s theory was also considered in terms of other applications of the Theory of Planned Behaviour in cadastral research. It was argued that there are similarities amongst the theories, but

that this study's theory emphasises the role of the loci of power with the addition of the Buyer - Security/Threat - Loci of Power cycle and the explicit association between the loci of power and the control factors.

Chapter 9 will provide an overview of the empirical findings, discuss the theoretical contribution of this research and make recommendations for future research.

## Chapter Nine: **Conclusions**

Land registration is used by governments and development agencies to support tenure security in the developing world (Deininger and Feder 2009). An example is the state-subsidised housing programmes in South Africa, which uses registration to support the tenure security of beneficiaries of state-subsidised housing. Researchers recognise that these projects do not achieve the intended outcomes (Platteau 1996, Firmin-Sellers and Sellers 1999, Barry and Fourie 2002, Benjaminsen *et al.* 2008, Payne *et al.* 2008, Sjaastad and Cousins 2008, Toulmin 2008, Deininger and Feder 2009), partly because the people whom the development projects are supposed to benefit do not use the land registration system to register land transactions. Despite this recognition, there is limited understanding of land registration use in development projects (Barry 1999, 2005, Barry *et al.* 2012).

There are several implications if the intended beneficiaries do not use the land registration system to secure land transactions. The buyers' tenure security becomes uncertain because they are not legally recognised as owners, which makes the buyer vulnerable to the risk of eviction by the state or the previous owner. The buyer may also not be able to access formal housing-related credit without proof of legal ownership. The integrity of the land register, as an accurate record of ownership, is also threatened if transactions are not registered. The consequent uncertainty may, ultimately, lead to a frozen land market as it becomes impossible to transfer land legally (Barry 2005). Also, if the land register is inaccurate, the management and administration of urban areas may be compromised, since these functions may rely on the data in the register.

Although the problems of off-register transactions are recognised, existing research and theory explaining land registration usage are limited. The recently introduced three-stage theory (Barry *et al.* 2012) and other land registration usage studies (Barry 1999, 2005) have made strides in filling the gap. However, aside from these theories, most of the existing research, particularly in South Africa, is either concerned with land markets or based on data from experts.

The objective of this study was to address this gap by developing theory explaining land registration usage from the perspective of buyers in a state-subsidised housing estate in South Africa. Using a case study, the dissertation answered the following questions:

- Why do buyers of state-subsidised houses use, or not use, the registration system to secure transactions?
- How do buyers of state-subsidised houses secure transactions?

The research objective was achieved and theory explaining land registration usage in Project 2001 was developed. The extension of theory, although limited to one case, assists in increasing the understanding of land registration usage.

This chapter will briefly review the empirical findings, discuss the theoretical contributions and propose future research.

## **9.1 Empirical findings**

### ***9.1.1 How do buyers of state-subsidised houses secure transactions?***

The dissertation first established how buyers conduct transactions in Project 2001. Three types of transaction-securing strategies were identified: off-register, interim off-register and registered transactions (refer to section 6.5.2). In off-register transactions the buyer and seller do not use registration, whereas interim off-register transactions are off-register transactions which include a promise to register the transaction, once the condition initially preventing registration ceases to exist. A registered transaction occurs when the buyer and seller go to a lawyer, sign a Deed of Sale, ownership is transferred and the buyer receives a title deed.

The off-register and interim off-register transactions were classified in this dissertation according to the evidence and external parties used in the transaction-securing strategy (refer to section 6.5.3). The evidence supporting the transactions included both tangible and intangible. Tangible evidence consist of documents that serve as evidence of the transaction (e.g. affidavits, transaction-related documents, the case book of the community court, and legal contracts), whereas intangible evidence includes verbal agreements that depend on the continued



cooperation of the buyer, seller, witnesses and external securing parties (e.g. oral agreements and the promise to register).

The external securing parties are individuals or organisations that assist the buyer and seller in securing a transaction. These may include the family of the seller or buyer, the community court, and lawyers; the police constitutes a special external securing party (refer to section 6.5.3).

Buyers used the evidence and external securing parties in various combinations and at different times to conduct off-registrar transactions. Buyers also accumulated evidence and external securing parties over time, to support the same transaction.

One of the most important outcomes for buyers who used registration was receipt of the title deed (refer to section 6.5.5). Despite this, a number of buyers felt secure once the Deed of Sale was signed. Transactions conducted with the assistance of employers were treated as a category of registered transactions; in such transactions, employers may assist, control or even act as an intermediate buyer.

Various supporting strategies developed alongside the main transaction-securing strategies (refer to section 6.5.6). These strategies were associated with financial and legal matters, but were also intended to mitigate risks linked to the seller. The financial strategies mainly involved payment plans to pay the purchase price, transfer costs and municipal arrears. The legal strategies included the adaptations made by lawyers in response to the pre-emptive sales clause which restricts sales and prevents registration. The adaptation allowed buyers and sellers to sign Deeds of Sale even though registration could occur only upon expiration of the clause. Another adaptation made by lawyers was to obtain a Power of Attorney from the seller once the Deed of Sale is signed, thus allowing the lawyer to act for the seller even if the seller is not available to sign the transfer documents.

### ***9.1.2 Why do buyers of state-subsidised houses use, or not use, the registration system to secure transactions?***

This dissertation argues that buyers evaluate transaction-securing strategies within a transactional environment that changes over time (refer to section 7.9), where the transactional environment consists of transaction-securing strategies, loci of power and regulatory structures. The decision to use a transaction-securing strategy or not is influenced by the buyers' attitudinal, normative and control beliefs, and also their perspective on the capacity of the loci of power to either secure or threaten a transaction.

The Project 2001 transactional environment was shaped by the housing history, the population changes and migration in Phumla (refer to section 8.2). The historical lack of housing since the beginning of Phumla, combined with the increase in population, particularly over the last twenty years, resulted in pressure on housing. The pressure on housing, increased the power of the seller (a power locus), thus allowing a seller to dictate the choice of transaction-securing strategy. The migration to and from Phumla, largely drawing on migrant workers from the Eastern Cape province, also meant that sellers could either not be found when buyers wanted to initiate registration, or disappeared before registration was fully completed. The missing seller phenomenon caused lawyers to change registration procedures by obtaining a legal mandate to act for the seller in his absence.

The threat that a property might be reclaimed by someone showing a better right than an unregistered buyer is a profound force in the transactional environment of Project 2001; this may be a result of the migration patterns, the lack of housing and the recognition of the title deed by residents. Sellers may be motivated to reclaim a house to make money, while retaining the house, and they may be successful given the desperation of buyers and extremely low access to housing. Sellers may also attempt a reclaim when they return to Phumla, precisely because it is so difficult to find accommodation. These reclaim attempts are only feasible because the seller remains the registered owner on the title deed.

The initial state of the land records in Project 2001 also affected the transactional environment (refer to section 8.3). The findings suggest that there is a link between the powerful role of the title deed and the large percentage of title deeds transferred as part of the housing project. Buyers believed that the title deed is the most important evidence of their ownership and title deeds were also used by sellers to reclaim houses sold off-register. It is unlikely that the title deed would have assumed this powerful role in Project 2001 if a limited number of title deeds had been transferred, since residents might have assigned this role to an alternative form of evidence, such as the municipal account.

However, those title deeds that were not transferred, or which were incorrectly transferred, may bar buyers from using the registration system. In addition, the title deeds contained a pre-emptive sales clause that restricted sales. This restriction prevented buyers from using the registration system for five years or introduced a delay between the Deed of Sale and the transfer of the title deed. In turn, this delay made buyers vulnerable to reclaims, and eviction by the municipality. The delay may also provide the opportunity for the seller to disappear, thus making registration difficult. In some cases, the delay contributed to the accumulation of municipal arrears by the buyer, which prevented the buyer from obtaining a rates clearance certificate, thus protracting the delay and compounding the problem.

The transactional environment also changed due to the accumulation of information, since inception, amongst Project 2001 residents this information related to a seller's ability to reclaim a property sold off- register and the benefits of registration to secure tenure. The findings in section 7.4.1 show that neighbours, friends and family are the most important source of information for buyers, as opposed to information from community leaders, the municipality, employers or lawyers. The information available to buyers thus increased as their network of neighbours, friends and family observed or experienced reclaims and registration over time. It was also argued that information about registration may have spread amongst residents at an earlier time because lawyers introduced the adaptation in response to the pre-emptive sales clause; even though buyers could not complete transfer, they did access registration years before the time permitted by the pre-emptive sales clause.

The transactional environment includes the loci of power and the regulatory structures (refer to section 7.7). The beliefs buyers use to evaluate a transaction-securing behaviour are linked to the loci of power and regulatory structures. For example, one evaluation may include the buyer and seller, and the community court and its procedures as well as the title deed. Other loci of power within the Project 2001 transactional environment included: the seller, lawyer, family, state and municipality. Although the title deed is an artefact, iconic of the legal framework, it also acted as a power locus in the context of the theoretical framework employed here, since it exerted control over the performance of off-register and registered transactions. The transactional environment contained three regulatory structures: the community court procedures, the legal framework, and the municipal policies and bylaws.

The regulatory structures may also regulate the behaviour of the loci of power. Although the loci of power did not change the regulatory structures in the Project 2001 case study, the adaptations made by lawyers to the registration process (refer to section 7.9.1) show how the loci of power can change the application of the legal framework - a regulatory structure.

The findings suggest that buyers decided upon a transaction-securing strategy by evaluating the level of tenure security and threats associated with the loci of power (refer to section 7.8). This evaluation occurs consecutively or concurrently with the evaluation of the transaction-securing behaviour in terms of the buyer's attitudinal, normative and control beliefs. According to the Buyer - Security/Threat - Loci of Power cycle, a transaction-securing strategy creates a relationship between the buyer and a power locus that may support security. If the security is threatened by the power locus, the buyer may attempt either to strengthen the relationship by obtaining support for the transaction from another power locus, or to entirely replace the power locus with another that is perceived to be capable of securing the transaction. The power locus may also be usurped by another power locus that then threatens tenure security. Within the context of Project 2001, the power locus at the top of the hierarchy is perceived by the buyers to be the title deed, as supported by the legal framework.

In addition to the evaluation of the loci of power, buyers also use their attitudinal, normative and control beliefs to evaluate a transaction-securing strategy.

A buyer's attitudinal beliefs include personal and transactional objective beliefs (refer to section 7.3). Personal objective beliefs include the belief that a particular transaction-securing strategy will secure a house for the family, ensure independence from family and landlords, and secure a livelihood. The transactional objective beliefs of the buyer may be linked to a specific transaction-securing strategy and related to the type of security the buyer wishes to achieve, the evidence the strategy will provide, and the external securing party that will support the transaction. Other transactional objective beliefs particularly associated with registration were: that registration will change the legal ownership, provide ownership independence and secure the transaction. These transactional objective beliefs may be linked to reclaims, since they are associated with preventing any ownership claims by the seller.

As mentioned earlier, neighbours, friends and family were the most influential in the normative beliefs held by buyers (refer to section 7.4.1) and they support registration, while warning buyers about the risk of transacting off-register. The municipality, lawyers, the community court and employers also recommend registration, although the community court uses an off-register process first. In addition, employers may suggest registration, but their influence is more discernible in terms of the effects on the control beliefs; they may increase the capacity of the buyers by assisting with registration (refer to section 7.5.1.4), or employers may make registration a condition of the financial support they give to the employee (refer to section 7.5.2.5(a)). Sellers may also influence normative beliefs by recommending either registration or off-register transactions. In Project 2001, the recommendation of the seller is especially persuasive because of the difficulty of finding a house (refer to section 8.2). Also, if the seller makes the transaction-securing strategy a condition of the sale, a control factor, the buyer may also be forced to agree, unless the buyer holds another control belief (i.e. a fear of reclaims) which may result in the buyer insisting upon registration.

Although attitudinal and normative beliefs may support the positive evaluation of a transaction-securing strategy, it does not necessarily result in the performance of the strategy. This is because control beliefs may prevent or delay the transaction-securing strategy.

Control beliefs are subdivided into capacity and autonomy beliefs (refer to section 7.5). The capacity of buyers is affected by information, costs, plans to manage the payment of costs, access to external securing parties and assistance by employers. The information the buyer has may support the performance of a transaction-securing strategy or may dissuade a buyer from implementing the strategy. The costs that form part of the capacity beliefs include transfer costs and municipal arrears. The transfer costs of a registered transaction may cause a buyer to opt for an off-register transaction or may be mitigated by a payment plan proposed by lawyers which assists the buyer to complete registration. Another cost is the seller or buyer's municipal arrears. These arrears may delay or prevent a buyer from obtaining the rates clearance certificate required for registration. The capability of the buyers to perform an off-register or registered transaction may also be increased if the seller permits the buyer to pay the purchase price over a period of time. To perform a transaction-securing strategy, a buyer may also need access to external securing parties. In case of an off-register transaction, the buyer might need access to family, the community court, police or a lawyer; whereas, in the case of registered transactions, lawyers and employers are the only external securing parties. The capacity of buyers to use registration may also be increased if they are assisted by their employers.

Autonomy control beliefs include positive and negative facilitating factors, and financial and legal barriers (refer to section 8.4). Control beliefs that form the autonomy construct are linked to the loci of power and regulatory structures in the transactional environment.

A facilitating control factor is positive if buyers believe it will assist them in performing a transaction-securing strategy. For example, buyers may believe that because the seller is a family member or shares their ethnic identity, this commonality will be influential in securing an off-register transaction. Furthermore, the buyer may believe that evidence or external securing parties engaged as part of an off-register transaction may facilitate registration by providing

proof or standing as witness of the transaction. This belief may extend to the buyer's holding a municipal account in her name. Buyers may also believe that, if they withhold a part of the purchase price, the seller would be forced to return for registration. Another facilitating factor that assists the performance of registration is the adaptations made by lawyers to the registration procedures.

On the other hand, a facilitating control factor is negative if the buyer believes that it forces them to use a particular transaction-securing strategy. The fears surrounding a reclaim by the seller is one such factor in the evaluation of off-register transactions. Another is a buyer's belief that she is forced to use an off-register transaction because the seller wants to leave the area urgently. In off-register transactions, factors associated with legal matters may also act as negative facilitating control factors. For example, if the pre-emptive sales clause is active or the title deed is not available, the buyer may be prevented from using registration and thus forced to use an off-register transaction.

Negative facilitating control factors also affect the evaluation of registration. Buyers may believe that they are forced to use registration because of a potential or actual reclaim threat by the seller or, in some cases, the municipal account holder. A negative facilitating control factor is also introduced if the municipality is attempting to evict a buyer and he has no legal proof of the transaction. Buyers may also believe that they are forced to use registration because they are foreigners, and thus in a vulnerable position, and therefore in greater need of legal recognition of their rights. Another negative facilitating control factor may be included in the evaluation of registration if employers make registration a condition of their financial support.

Where a seller insists that he be paid before initiating the transaction-securing strategy, it represents a financial barrier in the evaluation of off-register transactions. This financial barrier may also be a condition of registration. Another financial barrier enters the evaluation of registration if the employer insists that the financial loan to the employee is paid back before registration occurs. Lawyers may also introduce financial barriers which are related to the payment of the transfer costs; the lawyer may require payment (or a demonstration that funds are

available to cover the transfer costs) before starting registration, before transferring the title deed or before delivering the title deed.

Various legal barriers also affected the evaluation of registration. The first was the pre-emptive sales clause that either delayed or prevented registration for five years. The second legal barrier was the title deed, but only when it was not available or incorrect. The legal owner is linked to the third legal barrier. Sellers may not be regarded as the owner if: (i) they bought the house off-register, (ii) they regard themselves as the heirs of the registered owner, but the estate has not been resolved, or (iii) they act as guardians for the owner, e.g. in the case of incapacity due to illness, but are not legally recognised as such. Another barrier to registration is introduced if the property being sold is held by two owners with undivided shares and, one 50% shareholder is not be available for registration, or wants a share of the purchase price before agreeing to participate in registration. Obstacles to completing registration also arise where the owners themselves disappear or die after an off-register transaction, or after signing a Deed of Sale. The rates clearance certificate represents the fourth legal barrier, since registration cannot occur without this certificate.

The attitudinal, normative and control beliefs are interrelated as illustrated in the discussion above. For example, the transactional objective belief that registration will change the legal ownership is related to the control belief that the seller may attempt to reclaim the house. Another example is the association between the normative belief that the seller supports an off-register transaction and the control belief that the seller makes an off-register transaction a condition of the sale.

Not only are the various attitudinal, normative and control beliefs related to each other, but also to the other components in the transactional environment. For example, transactional objective beliefs about tenure security may originate from the evaluation of the Buyer - Security/Threat - Loci of Power cycle. Relations also exist amongst the control factors, loci of power and regulatory structures. For example, reclaim threats are linked to the seller. Obtaining the rates clearance certificate is determined by municipal policies which are controlled by the



municipality, to use an example of a control factor linked to a regulatory structure which, in turn, is linked to a power locus.

Therefore, a buyer may decide to attempt a transaction-securing strategy based on the evaluation of the Buyer - Security/Threat - Loci of Power cycle and the attitudinal, normative, and control beliefs associated with the transaction-securing strategy. These evaluations are influenced by the transactional environment which contains the transaction-securing behaviours, the loci of power and the regulatory structures. The transactional environment changes over time. In addition, the transactional environment is affected by the lack of housing stock, the increase in population and the migratory behaviour of residents in Phumla.

## **9.2 Theoretical contributions**

This dissertation presents theory explaining why buyers decided to use or not use the land registration system in a state-subsidised housing estate in South Africa. The research was set within a theoretical framework consisting of three interacting components that form the transactional environment: transaction-securing behaviours, loci of power and regulatory structures. The transaction-securing behaviours were further understood in terms of the Theory of Planned Behaviour. The analysis indicated the necessity of expanding the theoretical framework in two ways. Firstly, by adding a Buyer - Security/Threat - Loci of Power cycle to model the decisions of a buyer who conducted transaction-securing sequences; and secondly, by explicitly recognising the relations amongst time, the transactional environment and the transaction-securing strategies.

The theory represents a distinct perspective that increases the understanding of land registration use. It presents a detailed explanation of the beliefs buyers use in evaluating transaction-securing strategies. The theory also incorporates transaction-securing sequences, establishes links between transaction-securing strategies and demonstrates how the transactional environment changes. In addition it highlights the role of the loci of power in transaction-securing strategies, showing that the loci of power have the potential to either secure or threaten the security of a transaction, which influences the evaluation of transaction-securing strategies by buyers. Therefore, although

it is substantive theory, it does provide guidance to better understand buyers' decisions in other state-subsidised housing estates in South Africa.

### **9.3 Comments**

It was not an aim of the research to make recommendations, since the dissertation is concerned with explaining land registration usage. However, based on the findings the following comments can be made about Project 2001 buyers and registration.

The beliefs used by buyers in the evaluation of registration suggest corresponding comments. The attitudinal and normative beliefs are largely affected by the availability of information about registration (refer to sections 7.3 and 7.4). Although these beliefs can be changed or reinforced by education, a more effective intervention may be providing free access to trusted sources of information, potentially the municipality, when buyers and sellers decide to transact.

The beliefs that formed part of the capacity of the buyers dealt with access to legal services, financial costs and payment plans, and information (refer to section 7.5.1). The information beliefs were addressed in the previous paragraph. The financial costs consist of the purchase price, transfer costs and municipal arrears. Although some buyers amass savings over a period of time to have enough to pay the purchase price, others did not have the necessary funds and arranged payment plans with sellers and employers. One alternative way in which buyers could finance the purchase price is by obtaining credit from banking institutions. However, this is currently an unlikely solution, since banks are reluctant to provide credit linked to low-cost houses and participants are wary of getting into debt with a bank (refer to section 7.5.1.2).

Although a decrease in transfer costs would assist buyers, it may have the unintended effect of making access to legal services difficult. The largest components of the transfer costs are the recommended tariff for conveyancer's fees (see Figure 2.1). Recognising the willingness of lawyers to accommodate clients in Project 2001, a decrease in the recommended tariff may make the situation untenable. Lawyers explained that the registration of state-subsidised properties are often complex which makes them more costly. Also, lawyers reported that they struggle to

collect their fees at times. Therefore, if the recommended tariff is decreased, it may result in lawyers refusing to accept clients transacting in state-subsidised housing, since revenue from these transactions would not cover costs.

As discussed in section 7.5.1.2, buyers often assume responsibility for the seller's municipal arrears, which may represent a significant cost, as compared to the purchase price and transfer costs. Since the municipal arrears must be paid to obtain rates clearance certificate for registration, it either delays registration or represents a financial burden to the buyer. One measure under control of the municipal council which may make a difference to buyers is modifying the municipality's rates clearance certificate policy to allow the buyer to assume responsibility for the seller's arrears. This has been observed elsewhere (Roux and Barry 2011). It would allow registration to be completed without the delay introduced by the lack of a rates clearance certificate. An additional benefit is that the buyer may then also be able to access the indigent subsidy for municipal services (refer to section 6.6); the subsidy is currently available only to the municipal account holder (Municipal Indigent Policy 2012). Under the Indigent Policy (2012), the municipal account holder can also make a payment arrangement with the municipality, which would ease the buyer's financial burden. This modification to the rates clearance policy would benefit the buyer, but also the municipality; when sales transactions are registered the municipal records are correct, which supports effective municipal planning, including the planning for the provision of state-subsidised houses.

Comments regarding the control beliefs associated with the autonomy (refer to section 7.5) can be confined to the legal barriers, since the facilitating control beliefs, even though they may be positive or negative, already assist with registration, and the financial barriers are related to the financial costs addressed above in relation to capacity.

The legal barriers to registration include the pre-emptive sales clause, an unavailable or incorrect title deed and transacting with the legal owner. A number of buyers who participated in the study, even though they may wish to register the transaction, will not be able to do so using the typical legal routes because of the legal difficulties introduced by these barriers. One solution,

albeit unavailable due to lack of resources, would be to petition the High Court to enforce transfer. Without intervention by an external party these buyers have two choices: they can remain in the houses and hope that their security is not threatened, keeping in mind that their children will not become the registered owners through inheritance; or they can sell the houses using an off-register transaction, which perpetuates the problem.

Recent work by Downie (2011) has suggested a legal route which takes advantage of the Land Titles Adjustment Act 111 of 1993, to address disputed ownership of low cost housing. Under this act, a commissioner can be appointed by the Minister of Rural Development and Land Reform to investigate and adjudicate claims according to his or her discretion (Land Titles Adjustment Act 111 of 1993, ss. 1 and 3). This provision allows registration in cases of off-register transactions, as well as transactions where the buyer attempted to register, but was prevented by an unavailable or incorrect title deed or an unavailable legal owner. However, this has proved to be difficult to implement and is likely to be costly.

#### **9.4 Future work**

This study was designed to address the research questions within the context of a case study. While the research focused on understanding the experiences of buyers, future research can explore various other avenues.

The characteristics of the Project 2001 case were a state-subsidised housing estate in a rural town in the Western Cape, where the majority of residents are Xhosa. Another feature was the lack of locally based organisations involved in land transactions. There is a community organisation which, although used by residents to transact in land, operates on limited scale. Another characteristic is that, unlike other state-subsidised housing estates, the majority of title deeds were transferred to beneficiaries within the first three years after the project completion.

Therefore, future work may include investigation of transaction-securing strategies in a similar manner as this study, but within different types of setting; e.g. a metropolitan area or another province; or a housing estate populated predominantly by a different ethnic group; or a housing

estate with pre-1994 housing stock. Also, a housing estate with a powerful local organisation may provide additional insight into the tensions between the registration system and *de facto* practices. As demonstrated in this research the initial proportion of title deeds transferred in Project 2001 affected the mode of transaction-securing strategies; conducting research with a similar agenda in a housing estate where few title deeds have been transferred will likely yield different insights.

This study investigated sales transactions. However, another type of transfer that will impact the majority of state-subsidised houses is that due to inheritance. Ownership rights claimed by inheritance were encountered in the course of the fieldwork, many of which proved to be unregistered. Although distinct from sales transactions, similar problems would be encountered if inherited properties are not registered.

### **9.5 Concluding remarks**

Tenure security is regarded as crucial in improving the living conditions of poor people, and land registration is seen by governments and aid agencies as a device that can be used to support this security. However, land registration systems often fail to achieve the objectives of development projects, because transactions subsequent to the project transfers may not be registered. Despite recognition of this problem by researchers, there is limited understanding of why buyers decide to use or not use the land registration system, especially from the perspective of buyers themselves. This investigation, using a case study of a state-subsidised housing estate in South Africa, sheds light on the multifarious motivations of buyers. The study also developed substantive theory based on the beliefs and experiences of buyers, albeit in the limited context of a state-subsidised housing estate in a Western Cape rural town. In this way, the investigation contributes to land registration usage theory and, may also provide new perspectives on land registration usage.

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## APPENDIX A: VERBAL CONSENT

Verbal consents were used when Project 2001 residents were interviewed, since these participants felt uncomfortable signing documents.

### Verbal Explanation of Project and Participation

The researcher explained the following:

*I am doing research to understand how transactions in land occur in Southern Africa. You were invited to participate because you are a (member of a community where land transactions may be occurring / you are an official of an organization that deals with land). I would greatly appreciate your input.*

### Verbal Consent

The researcher explained the following:

*This participation is voluntary and you can withdraw at any stage of the project. You can also agree to the use of all information provided by you up to that point or you may request that it be destroyed.*

*You may ask that all the information that you talk about must be confidential and anonymous. You may ask me to use a pseudonym or false name and not your real name when writing the research results.*

*The interview will take about 30 minutes to an hour.*

*Do you have any objection to me tape recording this interview?*

The participants were also made aware that they may request to review a transcript of the interview. They were also asked if anything needs to be clarified before the interview started.

At the end of the interview the participant was thanked for his/her participation and also informed that the researcher may ask for another interview and that this will be arranged at the participant's convenience.

## **APPENDIX B: CONSENT FORM: PARTICIPANTS OTHER THAN PROJECT 2001**

### **RESIDENTS**

This consent form, a copy of which has been given to you, is only part of the process of informed consent. If you want more details about something mentioned here, or information not included here, you should feel free to ask. Please take the time to read this carefully and to understand any accompanying information.

The University of Calgary Conjoint Faculties Research Ethics Board has approved this research study.

#### **Purpose of the Study:**

The purpose of this study is to understand why people are buying land unofficially (why the new owner is not registered after the sale of land) in urban areas in South Africa.

You were invited to participate because

1. you work for an organization that fulfils land management functions
2. you are a member of an organization that is concerned with land ownership

It would be appreciated if you would assist in this study.

#### **What Will I Be Asked To Do?**

You will be asked questions and can give any information that you think may be important.

This interview will last 30 minutes to 1 hour.

You may be asked for another interview or to comment on ideas. You will be contacted and asked if you are willing to do another interview and if so an appointment will be made when it is convenient.

You may request a transcript of this interview for review. If you select to review this interview, the comments need to be returned to me within two weeks. If you do not reply within this time I will accept that you approve the transcript.

Your participation is voluntary and you may refuse to participate at any time. If you decide to withdraw, you may agree to the use of the data provided by you up to that point or you may request that it be destroyed.

#### **What Type of Personal Information Will Be Collected?**

There are several options for you to consider if you decide to take part in this research. You can choose all, some or none of them.

If you grant permission to be photographed you will not be identified by name or pseudonym in the photograph and it will not be related to any comments you make.

Please put a check mark on the corresponding line(s) that grants me your permission to:

*I grant permission to be audio taped: Yes: \_\_\_ No: \_\_\_*

*I grant permission to be photographed: Yes: \_\_\_ No: \_\_\_*

*I grant permission to be videotaped: Yes: \_\_\_ No: \_\_\_*

*I grant permission to have my organization's name used: Yes: \_\_\_ No: \_\_\_*

*I wish to remain anonymous: Yes: \_\_\_ No: \_\_\_*

*I wish to remain anonymous, but you may refer to me by a pseudonym: Yes: \_\_\_ No: \_\_\_*

*The pseudonym I choose for myself is:*

*You may quote me and use my name: Yes: \_\_\_ No: \_\_\_*

### **Are there Risks or Benefits if I Participate?**

There would be no risks associated with your participation.

The indirect benefits that you would receive by participating are access to a land tenure expert and information in terms of land rights and ownership.

### **What Happens to the Information I Provide?**

No one except the researcher, her supervisor Dr. M Barry and Dr. J Whittal (University of Cape Town) will be allowed to see or hear any of the answers to the interview questions or the interview tape. The data are kept in a locked cabinet only accessible by the researcher and her supervisor. The anonymous data will be stored for five years on a computer disk, at which time, it will be permanently erased.

The information you provided will be used in a doctoral thesis and may be published in an academic journal or presented at conferences. However, if you select to remain anonymous, great care will be taken to ensure that you cannot be identified.

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### **Signatures (written consent)**

Your signature on this form indicates that you 1) understand to your satisfaction the information provided to you about your participation in this research project, and 2) agree to participate as a research subject.

In no way does this waive your legal rights nor release the investigators, sponsors, or involved institutions from their legal and professional responsibilities. You are free to withdraw from this research project at any time. You should feel free to ask for clarification or new information throughout your participation.

Participant's Name: (please print) \_\_\_\_\_

Participant's Signature \_\_\_\_\_ Date: \_\_\_\_\_

Researcher's Name: (please print) \_\_\_\_\_

Researcher's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### **Questions/Concerns**

If you have any further questions or want clarification regarding this research and/or your participation, please contact:

*[Researcher's contact details]*

*or*

*[Supervisor's contact details]*

If you have any concerns about the way you've been treated as a participant, please contact the Senior Ethics Resource Officer, Research Services Office, University of Calgary at [contact details].

A copy of this consent form has been given to you to keep for your records and reference. The investigator has kept a copy of the consent form.

## APPENDIX C: INTERVIEW GUIDE: RESIDENTS

The interview follows the introduction and explanation of ethics in appendices A and B.

1. Gender / Age / Marital Status / Education
2. Household structure
3. Housing history: Where did you live before you came here? And before that? Etc.
4. How did you get your house?

If subsidy beneficiary:

5. How did you apply for subsidy? Process?
6. Do you have title? When did you get your title?
7. What does having title mean to you?
8. How do you protect your rights? If you go away what do you do with your house?
9. If you have a problem, to whom or what organisation will you talk?
10. Would you sell your house?
11. If you sell your house, how much would you sell it for?
12. How would you do it? Find buyer? Process

If buyer:

13. When did you buy the house?
14. How did you find a seller?
15. Please explain the process from finding the seller, what did you do then?
16. Where did the seller go after selling the house?
17. Do you know why the seller sold the house?
18. How much did you pay for the house?
19. Do you have a title? When did you get your title?
20. What does having a title mean to you?

General:

21. Do you know of other people in Project 2001 that bought their houses?
22. Would you sell your house? How much would you sell your house for? Why?
23. Would you extend your house?
24. What alternative community structures are there?
  
25. Other people to interview?

## APPENDIX D: DEMOGRAPHIC DATA – PARTICIPANTS WHO BOUGHT HOUSES

Total number of buyer households	34 (44 participants)
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### Gender

<b>Gender</b>	Female	Male	Couples
<b>Number</b>	20	24	10

Twenty women and 24 men were interviewed in buyer households. Ten women and men were interviewed as a couple, and in these interviews, six couples made an equal contribution, two interviews were dominated by the men and two by the women.

### Age

Range	Female	Male	Total
18 – 30	6	4	10
31 – 40	9	14	23
41 - 50	4	2	6
51 – 60	1	1	2
No response	0	3	3

### Education

Level of education completed	Female	Male	Total
No formal education - Grade 3	0	0	0
Grade 4	0	1	1
Grade 5	0	1	1
Grade 6	1	0	1
Grade 7	0	0	0
Grade 8	0	3	3
Grade 9	1	0	1
Grade 10	1	1	2
Grade 11	7	3	10
Grade 12	6	4	10
Tertiary education	3	3	6
No response	1	8	9

Place of origin

A breakdown of the origins of participants involved in sales and the years they settled in Phumla.

<b>Date Range</b>	<b>Phumla</b>	<b>Eastern Cape</b>	<b>Western Cape</b>	<b>Other provinces</b>	<b>Other African Country</b>	<b>Unknown</b>	<b>Total</b>
<b>Pre-1994</b>	4	1	-	1	-	-	6
<b>1994 – 1999</b>	-	9	1	1	-	-	11
<b>2000 - 2005</b>	-	14	2	1	2	-	19
<b>2006 - 2009</b>	-	3	-	1	1	-	5
<b>No response</b>	-	-	-	-	-	3	3
<b>Total</b>	4	27	3	4	3	3	44