

Technical Note on Documents for Housing Issues in Shelter Operations

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The purpose of the current Technical Note is to provide guidance on how to approach the delivery of shelter assistance to families who do not have the ownership documents requested by most of the shelter agencies and donors.

Based on the Shelter Cluster's and the HLP TWG's (House, Land and Property technical working group) recommendations, most of the shelter agencies require - as a precondition for the inclusion in their home repair programmes - a set of documents that show the connection between a potential beneficiary and the real estate in which this potential beneficiary is living in.

The risk foreseen by shelter agencies is that - in the absence of entitling documents - the lawful owner may evict the family assisted by the agency just after the completion of the repairs.

This issue has most often resulted in the exclusion of otherwise-eligible vulnerable families from shelter agencies programmes of home repairs.

Based on the recommendations from free legal aid provider several options are proposed to be followed during the selection of beneficiaries.

It should be noted that these recommendations relate mainly to the Heavy Repairs and Reconstructions.

Selection Process

Beneficiaries of Heavy Repairs and Reconstructions should be identified by the field teams on the basis of vulnerability criteria and technical feasibility and submitted to the vetting of a joint committee, preferably formed by Shelter, Protection and Security staff.

The decision on the inclusion of the identified families in the beneficiary list should be taken by the joint committee who should consider each case separately, identifying those most vulnerable who meet the mandatory criteria.

Before a family is actually included in the final list of selected beneficiaries, the joint committee must verify the full compliance of the pre-selected beneficiary's documentation set collected by the field teams, with the following list of requested documentation:

- Technical Survey form for each beneficiary;
- Decision of the Vetting Committee on received vulnerability points – List of selected beneficiaries;
- Copies of ID-card (internal passport¹) and identification code;
- Tripartite contract between the Humanitarian Agency, beneficiary and local council;
- Copy of Act of damage/destruction;
- Copy of entitling documentation or adequate evidences of permanent residence in the damaged/destroyed/ dwelling.

Evidence of the ownership

Identifying proper entitling documentation or adequate proof of permanent residence in the destroyed/damaged dwelling shall be performed in following order:

Step 1 - The entitling documentation for the beneficiaries is checked and the presence of any document from the list of proper entitling documentation for real estate in Ukraine means that the beneficiary has legal proof of being the legal owner of the damaged/destroyed dwelling.

The list of proper entitling documentation for real estate in Ukraine includes²:

- Extract from the State Register of Rights to Real Estate;

¹ Persons who have not received identification code due to their religious belief may submit the copy of passport including the page with stamp on this matter

² This list is based on articles 21, 27 of the Law of Ukraine on State Registration of Entitling Rights for Real Estate and Its Limitation

- Informational note from the State Register of Rights to Real Estate;
- Any contract on the transaction of real estate (purchase-sale, gift, exchange etc.);
- Certificates of title to property;
- Certificates of the right to inheritance;
- Certificates on the acquisition of property from public auction;
- Household books³;
- Court decision.

Check point: - If any entitling document is present in the potential beneficiary's documentation pack, -> the selection process is complete and the delivery of shelter assistance (in kind or cash-based) can start

- If the entitling document in the potential beneficiary's documentation pack is considered not sufficient -> move to the **Step 2**.

Step 2 - One of the objectives of the Shelter interventions by Humanitarian Agency is to assist conflict affected populations in improving and secure the shelter conditions to the minimum standards meaning that support should be provided based on the vulnerability of the beneficiary and not his residential status. Especially when we take into account that in the conflict-affected areas many people live in their ancestors' houses the question of having ownership documents wasn't the main issue for them for a long time. Thus they were considered as owners of those houses and this can be justified with the evidences from the places of their residence.

The list of adequate evidences of permanent residence in destroyed/damaged dwelling⁴:

- Stamp in passport on registration at the address of destroyed/damaged dwelling;
- Statement of local council on the fact of permanent residence;
- Contracts on utility services;
- Order on the right to occupy dwelling by local council or state enterprise;
- Rent contract.

Check point: - If there are at list two adequate evidences of permanent residence in the potential beneficiary's documentation pack -> the selection process is complete and the delivery of shelter assistance (in kind or cash-based) can start

- If there is one or less adequate evidences of permanent residence in the potential beneficiary's documentation pack -> move to the **Step 3**.

³ Please refer to Annex 1

⁴ This list is based on court practice of adequate evidences of fact of permanent residence in the proceeding on recognizing the property rights on usucapion matter

Step 3 - Armed conflict in Eastern Ukraine produced a lot of situations that might be not covered by general algorithm, or where beneficiaries struggle by legal gaps in obtaining entitling documentation or just do not have enough money to pay court fees or notary services. The Humanitarian Agency should individually assess this kind of beneficiaries in regard not to refuse someone who is in need only due to bureaucratic reasons.

Examples of “special situations” and respective instructions⁵:

- The owner of destroyed/damaged house is deceased relative of beneficiary and beneficiary have the right for inheritance (inheritance deadlines is not missed) – in this particular case beneficiary can just open inheritance case and provide the Humanitarian Agency with the Excerpt from Register of Inheritance Cases;
- The owner of destroyed/damaged house is deceased relative of beneficiary and beneficiary have the right for inheritance (inheritance deadlines is missed) – lawsuit⁶ on receiving the allowance to get into inheritance;
- All entitling documentation was destroyed/lost/damaged – lawsuit on recognition of property rights;
- The beneficiary has been occupying the house for more than 10 years but do not have any entitling documentation – lawsuit on recognition of property rights on usucapion matter.

Check point: - If we are in any of the “special situations” mentioned above and the beneficiary has provided documentation proving his/her capacity to get entitling rights in the future - > the selection process is completed and the delivery of shelter assistance (in kind or cash-based) can start

- If we are not in one of the “special situations” mentioned above or the beneficiary was not able to provide any documentation or conduct any activities to get it -> the selection process is completed but the beneficiary cannot be included in the beneficiary list.

⁵ Any special situation should be discussed with free legal aid provider (found solely or through the HLP TWG) and the decision should be based on potential beneficiary’s possibility to get entitling right in the future

⁶ As a proof of the filling court with a suit, potential beneficiary can submit one of the following documents to Humanitarian Agency: a) a copy of the suit with a court’s stamp on its receiving; b) court’s decision on proceeding initiation; c) in case of the absence of any procedural documentation, potential beneficiary can provide the Humanitarian Agency with court case number and then the free legal aid provider should check information on this case in the open online register.

Explanation on the Household books

According to paragraph 43 of the current Resolution of the Cabinet of Ministers of Ukraine "On state registration of real rights to real estate and encumbrances" No. 1127 dated December 25, 2015, instead of the documents provided for in paragraph 42 of this Procedure for the state registration of ownership of individual (estate) houses, country houses, household (private) buildings and structures, additional constructions to them, constructed until August 5, 1992 and located in the territory of village, settlement, city councils which according to the legislation carried out the household accounting, the following documents may be submitted:

1) a document certifying the real right to the land plot in which the object of immovable property is located, including the decision of the relevant council on the transfer (provision) of the land plot for the use or ownership or information about the transfer (provision) of the land for use or property from a household book;

2) an extract from the **household book** provided by the executive body of the village council (if such body is not created, - the village chairman), the settlement, city council or the relevant archival institution.

According to the paragraph 42 of the CMU resolution No. 1127 dated December 25, 2015, for the state registration of ownership of individual (estate) houses, country houses, household (adjoining) buildings and structures, additional constructions to them, constructed until August 5, 1992, the following documents are submitted:

1) technical passport on the object of real estate;

2) a document confirming the assignment of the object of real estate address.

The document confirming the assignment of a real property object address is not required in the case when the state registration of ownership is held on an individual (estate) house, country houses, household which was constructed on the land plot, the right for which is registered in the State Register of Rights. In this case, the applicant in the submitted application must indicate the cadastral number of the relevant land plot.