

SPECIAL ISSUE

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LEGAL NOTICE NO. 98

THE HOUSING ACT

(Cap. 117)

IN EXERCISE of the powers conferred by section 27(1) of the Housing Act, the Minister for Lands and Housing makes the following Regulations:—

THE CIVIL SERVANTS (HOUSING SCHEME FUND) REGULATIONS, 2004

1. These Regulations may be cited as the Civil Servants (Housing Scheme Fund) Regulations, 2004, and shall be deemed to have come into operation on the 1st September, 2004.

Citation and commencement.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

"borrower" means a person in receipt of a loan out of the Fund;

"civil servant" means employee of the Public Service Commission who is not covered by any other housing scheme;

"Committee" means the Scheme Management Committee established under regulation 6 of these Regulations;

"financial year" means a period of twelve months ending on the 30th June of each year;

"Fund" means the Civil Servant Housing Scheme Fund established by regulation 3 of these Regulations;

"mortgage finance company" has the meaning assigned to it under section 2 of the Banking Act;

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"officer administering the Fund" means the accounting officer of the Ministry for the time being responsible for housing;

"tenant purchase institution" means a company incorporated in Kenya which has not less than twenty years experience in operation of tenant purchase loan schemes for over two thousand housing units at one moment.

3. There is hereby established a fund to be known as the Civil Service Housing Scheme Fund.

Establishment of the Fund.

4. The objective and purpose for which the Fund is established is to—

Objective and purpose of the Fund.

(a) provide housing loan facilities to civil servants for the purposes of either purchasing or constructing a residential house;

(b) develop housing units for sale and for rental by civil servants; and

- (c) raise funds for the implementation of the objectives stated under paragraph (a) and (b) of this regulation.

Capital of the Fund.

5. The capital of the Fund shall consist of —

- (a) the initial capital of three hundred million shillings paid out of the vote of the Ministry of Lands and Housing for the 2004/2005 financial year and such other funds as may be voted in subsequent financial years;
- (b) proceeds from the sale of non-strategic houses; and
- (c) all monies that shall be paid into the account operated by the officer administering the Fund.

Management of the Fund.

6.(1) The Fund shall be administered by the Scheme Management Committee which shall consist of the—

- (a) officer administering the Fund;
- (b) Permanent Secretary in charge of Finance;
- (c) Permanent Secretary in charge of Personnel Management;
- (d) Permanent Secretary in charge of Labour;
- (e) Permanent Secretary in charge of Public Works;
- (f) Permanent Secretary in charge of Local Authorities; and
- (g) Attorney-General.

(2) The functions of the Committee shall be to—

- (a) supervise and control the day to day administration of the Fund;
- (b) determine and regulate interest payable by loanees;
- (c) approve all housing development and financing proposals;
- (d) enter into agreement with persons or legal entities for the purposes of providing services to the Fund;
- (e) develop criteria for the beneficiaries of the Fund;
- (f) establish management guidelines and engage such staff as may be necessary to assist the Committee and the officer administering the Fund; and
- (g) such other duty as may be directed by the Minister for the purposes of the proper management of the Fund.

(3) The Committee shall meet at least four times in a year.

(4) The officer administering the Fund shall be the chairman of the Committee.

(5) The quorum for a meeting of the Committee shall be the chairman and three other members.

(6) The decision of the Committee shall be by simple majority and in the case of a tie, the chairman shall have a casting vote.

7.(1) A loan granted under these Regulations shall be solely utilised for the purchase or development of residential property for the occupation by the applicant.

Purpose of loan.

(2) A loan for development of residential property shall be granted at the discretion of the Committee to a civil servant who is in possession of a title deed to the land on which the development is to be carried out.

8. (1) A loan granted for the development of residential property, shall be released to the borrower in phases in accordance with paragraphs (2) and (3) of this regulation.

Disbursement of loans for development.

(2) The first disbursement shall be based on twenty per cent of the value of land on which the residential property is proposed to be developed.

(3) The subsequent disbursements shall be based on the rate of completion of the various phases of development as certified by a valuer, registered as such under Valuer Act, at the cost of the borrower.

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9.(1) A civil servant who wishes to apply for a loan from the Fund shall make such application to the officer administering the Fund in such manner as the Committee may prescribe.

Application for loan.

(2) An application for a loan for construction purposes shall be accompanied by the following documents where applicable—

- (a) copies of the designs of the proposed residential property duly approved by the local authority within whose area it is to be situated;
- (b) bills of quantities in respect of the proposed development;
- (c) an official search of the title to the property intended to be purchased; and
- (d) a certified copy of the sale agreement relating to the property.

(3) A loan granted under these Regulations shall be funded at the rate of—

- (a) seventy per centum of the value of the property, where such property is situated in Nairobi; and
- (b) sixty per centum of the value of the property where the property is situated in any other area.

(4) The borrower shall be required to deposit the balance under paragraph (3) with the Fund together with all monies payable as stamp duty and other legal fees.

(5) The Committee may, where it deems appropriate, appoint an advocate to act on its behalf in respect of transactions relating to the property under these Regulations.

Leasehold property.

10. Where the property intended to be purchased through a loan from the Fund is leasehold property, no loan shall be granted unless the expiry date of such lease is at least forty-five years beyond the final loan repayment date.

Repayment of loan.

11.(1) A loan granted under these Regulations shall be repayable within a period of eighteen years or before the loanee attains the age of sixty years whichever is the earlier.

(2) A borrower may give prior authority in writing for his pension dues to be utilized to clear any outstanding debt in case he retires before fully repaying the loan.

(3) Where the property is developed by the Fund for the purposes of tenant purchase, the borrower shall pay a deposit of ten per centum of the value of the property and shall be granted a loan of the remaining ninety per centum to be repaid monthly and in accordance with these Regulations.

Interest on loan.

12. (1) The interest payable on a loan shall be at the rate of at least three per centum per annum on a monthly reducing balance or such other rate as may from time to time be determined by the Committee.

(2) The interest charged under this regulation shall be paid by the borrower.

Lien under loan property.

13.(1) The Fund shall register a charge on any property financed through a loan granted under these Regulations and such charge shall impose an obligation on the chargee—

(a) not to mortgage, charge surrender the lease, or sell or agree to sell or part with possession of the charged property or part thereof without the prior written consent of the Committee;

(b) to meet and pay all rates, rents, insurance and any other outgoing in respect of the property and send the proof of such payments to the Committee; and

(c) to provide a transfer deed duly signed by the borrower and a letter authorizing the Fund to sell the property in case of default in payment.

(2) All residential properties purchased or developed through the Fund shall be constructed of such standards and material as be acceptable to the Committee may approve.

(3) During the tenant purchase or loan repayment period, the borrower shall—

(a) ensure that the property is used for residential purposes only;

(b) maintain the property in a satisfactory state of repair; and

(c) make no extension or any structural alteration to the property or title thereto without the prior approval of the Committee.

(4) The Committee shall grant only one loan or one house to either the civil servant or his spouse where the spouse is also a civil servant and the granting of a loan or house to one spouse shall bar the other spouse from benefiting from the Fund.

(5) All legal documentation and disbursement of funds shall be supervised by the officer administering the Fund.

14. (1) Every borrower shall take and maintain a life insurance policy and a fire insurance policy with an insurance company approved by the Committee, the cost of which shall be paid out of the Fund and debited in borrower's account.

Insurance in respect of loan property.

(2) The originals of all documents relating to property financed by a loan from the Fund shall be kept in safe custody by the officer administering the Fund.

(3) The Committee shall be entitled to do everything lawful and necessary to protect its interest in the property in respect of which a loan is granted.

15. (1) Where a borrower defaults in repayment of the loan for a period of three consecutive months, the Committee shall repossess and sell the property to another deserving civil servant.

Default in repayment.

(2) Notwithstanding these Regulations, where a borrower ceases to be a civil servant before repayment in full, the Committee may, in its discretion, grant a maximum period of four months in which he may make the outstanding loan repayment in full.

16. The officer administering the Fund shall—

Administration of the Fund.

(a) open and manage a bank account for the Fund;

(b) supervise and control the administration of the Fund;

(c) utilize the interest accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirement concerning such use;

(d) cause to be kept books of account and other records in relation to the Fund;

(e) prepare, sign and transmit to the Controller and Auditor-General in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund, in such details as the Treasury may, from time to time, direct in accordance with section 18(2) of the Exchequer and Audit Act.

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17 No person shall sell or in anyway transfer any property acquired from the Fund under these Regulations unless—

Transfer or sale of loan property.

(a) a period of not less than eight years has expired from the date—

(i) of the payment of the full purchase price of the property together with such interest as may be due; or

(ii) of the payment in full of the loan advanced by the Fund together with such interest as may be due:

(b) the sale or transfer has been approved by the Committee.

Duties of mortgage institution.

18. Where the Committee, pursuant to regulation 6(2)(d) of these Regulations, appoints a tenant purchase institution or a mortgage finance company to administer the Fund, the institution shall—

- (a) operate individual accounts for each borrower and provide details of recoveries of the loan;
- (b) charge security on properties acquired through loans from the Fund to protect the interests of the Fund and act as a custodian of such charges;
- (c) disburse cheques for newly approved loans to borrowers after the necessary documentation is completed by the Committee;
- (d) pay all outgoing and issue demand notices to defaulting borrowers through the officer administering the Fund; and
- (e) upon repayment of the loan, interest and other expenses which may be outstanding, discharge the charge and release the security documents to the borrowers.

Management costs.

19. The Fund or, where applicable, the tenant purchase institution or mortgage finance company referred to under regulation 18, may charge an interest of not more than two per centum per annum of the value of the loan to cover its management costs.

Miscellaneous.

20. These Regulations shall be supplemented by such requirements as be may be detailed in the loan application form supplied by the Fund and by the contract between Fund and the borrower.

Amendment to Regulations.

21. The Committee may, from time to time recommend to the Minister any amendment to these Regulations.

Made on the 9th September, 2004.

A. M. KIMUNYA,
Minister for Lands and Housing.