

LEGAL NOTICE NO.....

THE HOUSING ACT
(Cap. 117)

IN EXERCISE of the powers conferred by section 24 of the Housing Act, as read with section 31A of the Employment Act, 2007, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development makes the following Regulations—

THE HOUSING FUND REGULATIONS, 2018

Citation. **1.** These Regulations may be cited as the Housing Fund Regulations, 2018.

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

“Act” means the Housing Act;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to housing;

“contribution” means a contribution payable under these Regulations;

“contributor” means a person making a contribution under these Regulations;

“Corporation” means the National Housing Corporation established by section 3 of the Act;

“dependent relative” in relation to a deceased member of the Fund, means any relative of the deceased who survives the deceased and who, on the date of the deceased’s death was—

(a) a wife or husband of the deceased;

(b) a son or daughter of the deceased who had not

attained the age of twenty-five years; or

- (c) parent, grandparent, grandchild, brother, sister son, daughter or such other relative who was wholly or substantially dependent on the deceased for the provision of the ordinary necessities of life suitable for a person of his station; and

“uninterrupted contribution” means a contribution made in continuity and where payments succeed each other without an interruption for a period of five years.

Affordable housing scheme. Cap. 470.

3. (1) The Housing Fund established under section 6(1) of the Act shall be an affordable housing scheme for the purposes of section 30A of the Income Tax Act.

(2) For the purposes of these Regulations, an “affordable housing scheme” means—

- (a) social housing designated for monthly income earners earning between 0 to 14,999 shillings;
- (b) low cost housing designated for monthly income earners earning between 15, 000 to 49, 999 shillings; or
- (c) mortgage gap housing designated for monthly income earners earning between 50, 000 to 100, 000 shillings;

Registration of employer and employee.

4. (1) Every employer who, under a contract of service, employs one employee or more shall register with the Housing Fund as a contributing employer and shall register his or her employee or employees as members of the Housing Fund.

(2) Every employee who is under a contract of service shall register with the Housing Fund as a contributor employee.

(3) Without prejudice to the provisions of paragraph (1), a self-employed person who wishes to become a member of the Housing Fund may register as a voluntary member.

(4) Any person who is registerable as an employer under this regulation shall—

- (a) produce proof of registration with the scheme; and

(b) be a citizen of Kenya of at least 18 years of age.

(5) The Housing Fund shall inform employers and employees of the requirement to register under this Regulations.

(6) Any employer who fails, neglects or refuses to register under this regulation commits an offence and shall, upon conviction, be liable to imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both.

(7) Any employer who fails, neglects or refuses to make a contribution under this regulation commits an offence and shall, upon conviction, be liable to imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both.

The Register.

5. (1) An employer registered under these Regulations shall—

- (a) keep a proper and up-to-date register or record of the earnings and any other particulars of employees as may be specified by the Corporation;
- (b) at all times produce the register or record on demand by a compliance or other officer of the Fund; and
- (c) retain such register or record for such period as the Corporation may specify, but such period shall not exceed ten years.

(2) A person who violates any of the provisions of paragraph (1) commits an offence and shall, upon conviction, be liable to imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both.

Voluntary contributions.

6. (1) Every voluntary member shall contribute to the Housing Fund—

- (a) a minimum contribution of one hundred shillings designated to cover the costs and operations of the Housing Fund; and
- (b) a minimum amount of one hundred shillings per month to accrue as a benefit to the member.

(2) The contributions made under paragraph (1) shall be paid into

the Housing Fund and immediately credited to the member's individual account as the Housing Fund Credit provided for under regulation 9.

Mode of payment.

7. (1) Contributions may be paid directly to a designated Housing Fund Account as may be specified by the Corporation.

(2) The Housing Fund shall notify the member of the receipt of the contribution as soon as the contribution is received.

Additional contributions.

8. Every member of the Housing Fund may make additional contributions which shall be credited to member's individual account as the Housing Fund Credit.

Creation of individual accounts for members of the Housing Fund.

9. (1) The Corporation shall cause to be established and maintained for each member of the Housing Fund, an individual account to be known as the Housing Fund Credit to which shall be credited all contributions made to the Housing Fund by and in respect of each member of the Housing Fund.

(2) The individual Housing Fund Credit shall, in respect of each member of the Housing Fund, at any particular date, show a full break down of—

- (a) credit showing the member contributions;
- (b) voluntary contributions;
- (c) additional contributions;
- (d) transfer payments into the account, if any;
- (e) transfer payments out of the account, if any; and
- (f) interest credited into the account, if any.

(3) Each member shall receive from the Housing Fund, at the end of every financial year, an annual benefit statement indicating the Housing Fund Credit.

(4) Notwithstanding the provisions of paragraph (3), a member may, upon giving sufficient written notice to the Housing Fund, obtain a benefit statement.

(5) Where the Housing Fund has availed the information herein required online, a member may obtain the same online information and

the Housing Fund shall ensure that the information online is up to date and sufficient for purposes of getting the information required under this regulation.

(6) Where the information required cannot be obtained or a member is incapacitated to access the information electronically, the Housing Fund shall give general notice to members informing them to access the information from the Housing Fund manually at specified offices situated in locations convenient to the members.

Termination of a member's account.

10. (1) The account of a member established under regulation 9, shall be deemed closed when—

- (a) all the moneys due from that account have been paid out of that account in accordance with these Regulations;
- (b) the member has ceased to be a member of the Housing Fund; and
- (c) no claim by or on behalf of that member to any benefit is pending determination.

Incorrect contributions.

11. (1) Where it is established by a member or officer of the Fund to the satisfaction of the Corporation that any amount has been paid to the Fund as a contribution when it was not payable under these Regulations and the amount was paid as a result of a *bona fide* error, the amount paid in error shall be refunded without interest thereon or may be applied, with the consent of the person who made the payment, to any current liability of that person to the Fund.

(2) Any amount which is payable as a contribution by an employer in respect of himself or herself or his or her employee that is in excess of the statutory contribution payable under the relevant law or these Regulations for any period, the amount in excess shall be refunded to the employer or employee, as the case may be, without interest thereon or may be applied, with the consent of the employer or employee, to any current liability of the employer or employee to the Housing Fund.

Access to contributions.

12. Contributions by individuals shall only be accessed for purposes of offsetting housing loans, security for mortgage or housing development after five years of uninterrupted contribution and shall attract such an annual return as may be determined by the Corporation.

Return on investment on

13. The Corporation shall set out the rate of return on investment for the contribution made by the employer and employee.

savings by members.

Return on contributions by members.

Eligibility criteria for affordable housing scheme.

Loan application procedure for direct lending by the Fund.

Eligibility criteria.

14. The Corporation shall, on an annual basis specify the return applicable on members' contributions into the Housing Fund.

15. A person shall qualify for the affordable housing scheme if that person—

- (a) is a Kenyan citizen of 18 years of age;
- (b) has proof of registration with the affordable housing scheme;
- (c) has proof of remittance of the contribution; and
- (d) is a first time home owner under the affordable housing scheme.

16. (1) Subject to regulation 15, a member who meets the criteria set out in these Regulations and guidelines by the Corporation, and wishes to be granted a loan from the Housing Fund shall make an application to the Corporation in such a manner as may be specified by the Corporation.

(2) Despite the generality of paragraph (1), an application for a loan under these Regulations shall be accompanied by the following documents, where appropriate —

- (a) duly filled application Form by the applicant;
- (b) certified copies of pay-slips for the immediate last three months by the respective accounting officers or certified current bank statements for the last six months;
- (c) a certified copy of the National Identify Card or Passport; and
- (d) a non-refundable application fees of one thousand shillings or as determined from time to time by the Corporation.

17. (1) The Corporation shall use the following eligibility criteria when evaluating a loan application—

- (a) first in first out principle of loan processing;

- (b) applicable loan threshold for each grade of the beneficiary;
- (c) compliance with the provisions of regulation 16(2);
- (d) ability to repay the loan within existing statutes and the stipulated time;
- (e) no borrower shall be eligible for more than one loan at a time from the Housing Fund within five years; and
- (f) any other conditions as may be specified by the Corporation.

Conditions for disbursement of Funds.

18. (1) A loan approved by the Corporation under these Regulations shall be released from the Housing Fund to the Individual Housing Fund Credit account.

(2) During the loan repayment period the beneficiary shall—

- (a) not lease, sell or agree to sell or part with possession of the charged house or any part of the house without the prior written consent of the Corporation;
- (b) meet costs for the insurance cover, if any, and pay such sum of money as may be determined by the Corporation from time to time;
- (c) maintain the house in a satisfactory state of repair.

(3) All legal documentation and disbursement of funds shall be with the Corporation.

Loan interest.

19. A loan granted to a member under these Regulations shall carry an interest rate of up to seven per cent per annum on a reducing balance basis which shall be retained in the Housing Fund or such other rate as may from time to time be determined by the Corporation in a gazette notice.

Loan charges and fees.

20. A person granted a loan under these Regulations shall be responsible for the charges and fees to be determined by the Corporation in relation—

- (a) to preservation of the value of the Housing Fund;

- (b) to management costs;
- (c) to insurance for both life and asset; and
- (d) to facility management costs.

Nomination of dependants to receive benefits.

21. (1) Every person entitled to become a member of the Housing Fund shall furnish to the Housing Fund, in the manner specified, particulars concerning himself or herself and his or her dependant relatives who shall receive benefits upon his death.

(2) A member of the Housing Fund shall update his or her nomination under paragraph (1) at any time and, in any event, annually and the revised nomination shall be submitted to the Housing Fund.

(3) A member's nomination under this regulation shall be regarded by the Corporation to be his or her absolute intention and the Corporation shall not be responsible for any errors of omission or inclusion contained in the nomination.

(4) Where a person has been validly nominated under this regulation, the Corporation may decline to pay or vary the nominated beneficiary and shall furnish in writing its reasons thereof.

Survivors' benefit.

22. (1) A survivors' benefit shall be paid to the dependants, if the member dies and was contributing to the Fund at the time of his or her death.

(2) The survivors' benefit payable under paragraph (1) shall, in aggregate, be equal in value to the member's Housing Fund Credit and interest accrued.

(3) The survivors' benefit payable under paragraph (2) shall be held by the Corporation on trust, and paid to the nominated beneficiary upon application by the beneficiaries in such proportions as stipulated by the member for the absolute use and benefit of the beneficiary.

(4) Despite the provisions of paragraph (3), the Corporation may exercise its option under regulation 21(4).

(5) with regard to any nomination under this regulation.

(6) Subject to any other written law, a benefit payable by the Fund upon the death of a member shall not form part of the assets in the estate of a member.

Retention of receipts and earnings.

23. All receipts, earnings and accruals to the Housing Fund, and the balance of the Housing Fund at the close of each financial year shall be retained by the Fund for the purposes of the Fund.

Budget approval.

24. The budget of the Housing Fund shall be approved by the Corporation.

Offences and penalties.

25. A person who misappropriates any funds or assets of the Housing Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term of two years or to a fine not exceeding ten thousand shillings or to both.

Winding up.

26. In the event of winding up of the Housing Fund, the cash balances shall be transferred to the Exchequer while other assets of the Fund shall be transferred to the Ministry in charge of housing to facilitate appropriate refunds to the contributors.

Made on the....., 2018.

James Macharia,
*Cabinet Secretary for Transport,
Infrastructure,
Housing, Urban Development and Public Works.*