

LEGAL NOTICE NO.....

THE HOUSING ACT
(Cap. 117)

IN EXERCISE of the powers conferred by section 24 of the Housing Act, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works makes the following Regulations—

THE NATIONAL HOUSING DEVELOPMENT FUND REGULATIONS, 2020

Citation. **1.** These Regulations may be cited as the National Housing Development Fund Regulations, 2020.

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 member making a contribution under these Regulations;

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

“dependant” in relation to a deceased member of the National Housing Development Fund, means a relative of the deceased or a person who survives the deceased and who, on the date of the deceased’s death was—

- (a) a spouse of the deceased;
- (b) a child of the deceased; or
- (c) a beneficiary nominated by the deceased.

“member” means a person who is registered with the National Housing Development Fund;

“National Housing Development Fund” has the meaning assigned to it under section 2 of the Act; and

“National Housing Development Fund Account” means an account created for each member where contributions will accrue.

Affordable housing scheme.

3. (1) The National Housing Development Fund shall be an affordable housing scheme for the purpose 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 up to 19,999 shillings;
- (b) low cost housing designated for monthly income earners earning between 20,000 to 49,999 shillings;
- (c) mortgage gap housing designated for monthly income earners earning between 50,000 to 149,999 shillings; or
- (d) Middle to High Income housing designated for monthly income earners earning 150,000 shillings and above:

Provided that an individual’s affordable housing scheme shall be based on their monthly income as at the date of application for a loan, housing or other benefit or entitlement from the National Housing Development Fund.

Registration of a member.

4. (1) Every member shall register with the National Housing Development Fund.

(2) Any person who is registerable as a member under this regulation shall—

- (a) be a citizen of Kenya of at least 18 years of age; and
- (b) be in possession of the National Identity Card.

Benefits to members.

5. Under the affordable housing scheme, a member—

- (a) who qualifies for a home as per regulation 15, may accrue their contributions to finance the purchase of a home under the affordable housing scheme;

- (b) may apply accrued contributions towards home construction or home improvement;
- (c) may, at any time—
 - (i) transfer their contributions to a pension scheme registered with the Retirement Benefits Authority;
 - (ii) transfer their contributions to a registered home ownership savings plan;
 - (iii) transfer their contributions to any member Registered under the National Housing Development Fund;
 - (iv) transfer their contributions to their dependants; or
 - (v) receive their contributions in cash:

Provided that contributions paid out in cash shall be included in the member's taxable income for the year and be subjected to tax at the prevailing rates.

Nomination of dependants to receive benefits.

6. (1) Every member shall furnish to the National Housing Development Fund, in the manner specified, particulars concerning himself or herself and his or her dependants who shall receive benefits upon his or her death.

(2) A member 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 National Housing Development 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.

Survivors' benefit.

7. (1) A deceased member's contribution shall be paid to the dependants, if the member dies.

(2) The deceased member's contribution payable under paragraph (1) shall, in aggregate, be equal in value to the member's National Housing Development Fund Account and interest accrued.

(3) The deceased member's contribution 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 6 with regard to any nomination under this regulation.

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

Contributions.

8. Every member shall contribute a minimum of two hundred shillings per month to the National Housing Development Fund and the contributions shall be immediately credited to the member's individual account as provided for under regulation 9.

Mode of payment.

9. (1) Contributions shall be paid directly to the National Housing Development Fund Account through a designated Mode of Payment as may be specified by the Corporation.

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

Creation of individual accounts for members of the Housing Fund.

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

(2) The individual National Housing Development Fund Account 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) transfer payments into the account, if any;
- (b) transfer payments out of the account, if any; and
- (c) interest credited into the account, if any.

(3) A member may, at any time, request an account statement.

(4) Where the National Housing Development Fund has availed the information herein required online, a member may obtain the same online information and the National Housing Development Fund shall ensure that the information online is up to date and sufficient for purposes of getting the information required under this regulation.

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

Termination of a member's account.

11. The account of a member established under regulation 10, 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 National Housing Development Fund; and
- (c) no claim by or on behalf of that member to any benefit is pending determination.

Incorrect contributions.

12. Where it is established by a member or officer of the National Housing Development Fund to the satisfaction of the Corporation that any amount has been paid to the National Housing Development 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 National Housing Development Fund.

Return on investment on contributions.

13. The Corporation shall set out the rate of return on investment on the contributions made by members into the National Housing Development Fund.

Return on contributions by members.

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

Eligibility criteria for affordable housing scheme.

15. A person shall qualify for a home under 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 contributed for at least 6 months; and
- (d) has contributed 10% of the price of the house.

Allocation criteria for the affordable housing scheme.

16. Allocation of homes under the affordable housing scheme shall be specified by the Corporation.

Loan application procedure for direct lending by the Fund.

17. (1) Subject to regulation 15, a member shall qualify for a loan application for affordable housing if that member meets the criteria set out in these Regulations and guidelines by the Corporation.

(2) A member who wishes to be granted a loan for the purchase, construction, or improvement of a home, shall make an application to the National Housing Development Fund in such a manner as may be specified by the Corporation.

(3) Despite the generality of paragraph (2), 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 member's National Identity Card or Passport; and
- (d) a non-refundable application fees as determined from time to time by the Corporation.

Eligibility criteria for a loan.

18. (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 income band as provided in regulation 3(2);
- (c) compliance with the provisions of regulation 17;
- (d) ability to repay the loan within the stipulated time;
- (e) no borrower shall be eligible for more than one loan from the National Housing Development Fund; and
- (f) any other conditions as may be specified by the Corporation.

Conditions for disbursement of Funds.

19. (1) A loan approved by the Corporation under these Regulations shall be released from the National Housing Development Fund to the individual National Housing Development Fund 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, and pay such sum of money as may be determined by the Corporation from time to time; and
- (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 rate.

20. 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 National Housing Development Fund or such other rate as may from time to time be determined by the Corporation in a gazette notice.

Loan charges and fees.

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

- (a) preservation of the value of the National Housing Development Fund;
- (b) administrative costs;

- (c) insurance for both life and asset; and
- (d) any other relevant services.

Retention of receipts and earnings.

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

Budget approval.

23. The budget of the National Housing Development Fund shall be approved by the Corporation.

Offences and penalties.

24. A person convicted of an offence under these Regulations shall be liable to—

- (a) a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both; and
- (b) where an act or omission of a person results in the loss of money from the National Housing Development Fund, that person shall be liable to a penalty equivalent to twice the amount lost.

Winding up.

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

Revocation of LN. No. 238 2018.

26. The Housing Fund Regulations, 2018 are hereby revoked.

Made on the....., 2020.

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