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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1661. 19 December 1997

No. 1661. 19 Desember 1997

It is hereby notified that the President has assented to the following Act which is hereby published for general information: —

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No.107 of 1997: Housing Act, 1997.

No. 107 van 1997: Behuisingswet, 1997.

# ACT

To provide for the facilitation of a sustainable housing development process; for this purpose to lay down general principles applicable to housing development in all spheres of government, to define the functions of national, provincial and local governments in respect of housing development and to provide for the establishment of a South African Housing Development Board, the continued existence of provincial boards under the name of provincial housing development boards and the financing of national housing programmes; to repeal certain laws; and to provide for matters connected therewith.

## PREAMBLE

WHEREAS in terms of section 26 of the Constitution of the Republic of South Africa, 1996, everyone has the right to have access to adequate housing, and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

AND WHEREAS the Parliament of the Republic of South Africa recognises that—  
 housing, as adequate shelter, fulfils a basic human need;  
 housing is both a product and a process;  
 housing is a product of human endeavour and enterprise;  
 housing is a vital part of integrated developmental planning;  
 housing is a key sector of the national economy;  
 housing is vital to the socio-economic well-being of the nation;

*(English text signed by the President.)  
 (Assented to 27 November 1997.)*

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**Definitions**

1. In this Act, unless the context otherwise indicates—
  - (i) **“Constitution”** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (vi)
  - (ii) **“Department”** means the Department of Housing; (iii) 30
  - (iii) **“Director-General”** means the Director-General: Housing; (iv )
  - (iv) **“Fund”** means the South African Housing Fund referred to in section 11(1); (v)
  - (v) **“head of department”** means the officer of a provincial administration in charge of the department of a provincial administration responsible for the administration of housing matters in a province; (vii) 35
  - (vi) **“housing development”** means the establishment and maintenance of habitable, stable and sustainable public and private residential environments to ensure viable households and communities in areas allowing convenient access to economic opportunities, and to health, educational and social amenities in which all citizens and permanent residents of the Republic will, on a progressive basis, have access to— 40
    - (a) permanent residential structures with secure tenure, ensuring internal and external privacy and providing adequate protection against the elements; and 45
    - (b) potable water, adequate sanitary facilities and domestic energy supply;
      - (i)
  - (vii) **“housing development project”** means any plan to undertake housing development as contemplated in any national housing programme; (ii)
  - (viii) **“MEC”** means the member of the Executive Council of a province responsible for housing matters in the province in question; (viii) 50

- (ix) **“Minister”** means the Minister of Housing; (ix)
- (x) **“municipality”** means a municipality as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993); (x)
- (xi) **“national housing policy”** means the national policy in respect of housing development determined by the Minister in terms of section 3(2)(a); (xi)
- (xii) **“national housing programme”** means any national policy framework to facilitate housing development, including, but not limited to, any housing assistance measure referred to in section 3(5) or any other measure or arrangement to—
  - (a) assist persons who cannot independently provide for their own housing needs;
  - (b) facilitate housing delivery; or
  - (c) rehabilitate and upgrade existing services and infrastructure; (xii)
- (xiii) **“provincial housing development board”** means a provincial housing development board referred to in section 8(1)(a)(i) or the body determined by provincial legislation to perform such board's functions as contemplated in section 8(13)(b)(ii); (xiii)
- (xiv) **“provincial housing development fund”** means a provincial housing development fund contemplated in section 12(2). (xiv)

## PART I PROVISIONS GENERAL PRINCIPLES

### General principles applicable to housing development

- 2. (1) National, provincial and local spheres of government must—
  - (a) give priority to the needs of the poor in respect of housing development;
  - (b) consult meaningfully with individual and communities affected by housing development;
  - (c) ensure that housing development—
    - (i) provides as wide a choice of housing and tenure options as is reasonably possible;
    - (ii) is economically, fiscally, socially and financially affordable and sustainable;
    - (iii) is based on integrated development planning and
    - (iv) is administered in a transparent, accountable and equitable manner, and upholds the practice of good governance;
  - (d) encourage and support individuals and communities, including, but not limited to, co-operatives, associations and other bodies which are community-based, in their efforts to fulfil their own housing needs by assisting them in accessing land, services and technical assistance in a way that leads to the transfer of skills to and empowerment of the community;
  - (e) promote—
    - (i) education and consumer protection in respect of housing development;
    - (ii) conditions in which everyone meets their obligations in respect of housing development;
    - (iii) the establishment, development and maintenance of socially and economically viable communities and of safe and healthy living conditions to ensure the elimination and prevention of slums and slum conditions;
    - (iv) the process of racial, social, economic and physical integration in urban and rural areas;
    - (v) the effective functioning of the housing market while levelling the playing fields and taking steps to achieve equitable access for all to that market;
    - (vi) measures to prohibit unfair discrimination on the ground of gender and other forms of unfair discrimination, by all actors in the housing development process;
    - (vii) higher density in respect of housing development to ensure the economical utilisation of land and services;

- (viii) the meeting Of Special housing needs, including, but not limited to, the needs of the disabled;
- (ix) the provision of community and recreational facilities in residential areas;
- (x) the housing needs of marginalised women and other groups disadvantaged by unfair discrimination; and
- (xi) the expression of cultural identity and diversity in housing development:
- (f) take due cognizance of the impact of housing development on the environment;
- (g) not inhibit housing development in rural or urban areas; 10
- (h) in the administration of any matter relating to housing development—
- (i) respect, protect, promote and fulfil the rights in the Bill of Rights in Chapter 2 of the Constitution;
- (ii) observe and adhere to the principles of co-operative government and intergovernmental relations referred to in section 41(I) of the Constitution; and
- (iii) comply with all other applicable provisions of the Constitution;
- (i) strive to achieve consensus in regard to the policies of the respective spheres of government in respect of housing development;
- (j) observe and adhere to the principles in Chapter 1 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), in respect of housing development; 20
- (k) use public money available for housing development in a manner which stimulates private investment in, and the contributions of individuals to, housing development; 25
- (l) facilitate active participation of all relevant stakeholders in housing development: and
- (m) observe and adhere to all principles for housing development prescribed under subsection (2).
- (2)(a) The Minister may, by notice in the *Gazette*, prescribe— 30
- (i) any principle for housing development in addition to, and consistent with, the principles set out in subsection (1)(a) to (l); and
- (ii) any principle set out in subsection (1)(a) to (l) in greater detail, but not inconsistent therewith.
- (b) The Minister must, before prescribing any such principle, cause a draft of such principle to be published in the *Gazette* and must consider any comment on such draft principle received from any person during a period of 30 days after such publication. 35
- (3)(a) A list of notices published in terms of subsection (2)(a) in the *Gazette* during the period covered in the list, must, within 14 days after the publication of any such notice in the *Gazette*, be submitted to Parliament for approval. 40
- (b) Such list of notices must in respect of each notice state the number and title of the notice and the number and date of the *Gazette* in which it was published.
- (c) If Parliament disapproves of any principle in such notice or any provision of such principle, such principle or provision ceases to have effect, but without prejudice to—
- (i) the validity of anything done in terms of such principle or provision before it so ceased to have effect: and 45
- (ii) any right or liability acquired or incurred in terms of such principle or provision before it so ceased to have effect.

## PART 2

## NATIONAL GOVERNMENT

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**Functions of national government**

3. (1) The national government acting through the Minister must, after consultation

**with every MEC** and the national organisation representing **municipalities** as contemplated in section 163(a) of the Constitution, **establish and facilitate a sustainable national housing development process.**

- (2) For the purposes of subsection (1) the Minister **must—**
- (a) **determine** national policy, including national **norms and standards**, in respect of housing development: 5
  - (b) set broad national housing **delivery goals and facilitate** the setting of provincial and, where appropriate, local government housing delivery goals in support thereof;
  - (c) monitor the performance of the national government **and**, in co-operation with every MEC, the **performance of provincial and local** governments against housing delivery goals and budgetary goals; 10
  - (d) assist provinces to develop the administrative capacity **required** for the effective exercise of their powers and performance of **their** duties in respect of housing development; 15
  - (e) support and strengthen the capacity of municipalities to **manage** their own affairs, to exercise their powers and perform their duties in respect of housing development;
  - (f) promote consultation on matters regarding housing development between the national government and representatives of— 20
    - (i) civil society;
    - (ii) the sectors and subsectors supplying or financing housing goods or services;
    - (iii) provincial and local governments; and
    - (iv) any other stakeholder in housing development; 25
  - (g) promote effective communication in respect of housing development.
- (3) For the purposes of subsection (2)(a) “national norms and standards” includes norms and standards in respect of permanent residential structures, but are not limited thereto.
- (4) For the purposes of performing the duties imposed by subsections (1) and (2) the Minister may— 30
- (a) establish a national institutional and funding framework for housing development;
  - (b) negotiate for the national apportionment of the state budget for housing development; 35
  - (c) prepare and maintain a multi-year national plan in respect of housing development;
  - (d) allocate funds for national housing programmed to provincial governments, including funds for national housing programmed administered by municipalities in terms of section 10: 40
  - (e) allocate funds for national facilitative programmed for housing development;
  - (f) obtain funds for land acquisition, infrastructure development, housing provision and end-user finance;
  - (g) institute and finance national housing programmes;
  - (h) establish and finance national institutions for the purposes of housing development, and supervise the execution of their mandate; 45
  - (i) evaluate the performance of the housing sector against set goals and equitableness and effectiveness requirements; and
  - (j) take any steps reasonably necessary to— 50
    - (i) create “an environment conducive to enabling provincial and local governments, the private sector, communities and individuals to achieve their respective goals in respect of housing development; and
    - (ii) promote the effective functioning of the housing market.
- (5) The following housing assistance measures, which were approved for financing out of the Fund in terms of section 10A, 10B, 10C or 10D of the Housing Act, 1966 (Act No. 4 of 1966), are deemed to be national housing programmed instituted by the Minister under subsection (4)(g): 55
- (a) The Housing Subsidy Scheme;
  - (b) The Guidelines for the Discount Benefit Scheme to promote Home Ownership, subject to section 17; 60

- (c) The Hostels Redevelopment Programme: Policy for the Upgrading of Public Sector Hostels:
- (d) The Criteria and Procedures governing the Allocation of the Bulk and Connector Infrastructure Grant until it is phased out on a date determined by the Minister in consultation with the Minister for Provincial Affairs and Constitutional Development. 5
- (6) The following national institutions financed out of the Fund in terms of section 10A, 10B, 10C or 10D of the Housing Act, 1966, are deemed to be national institutions established and financed by the Minister under subsection (4)(h): 10
- (a) The Mortgage Indemnity Fund (Pty) Ltd;
- (b) The National Housing Finance Corporation;
- (c) The National Urban Reconstruction and Housing Agency.
- (7) Every provincial government and municipality must, in accordance with the procedure determined by the Minister, furnish such reports, returns and other information as the Minister requires for the purposes of this Act. 15
- (8) When exercising any executive authority in terms of this section, the Minister must co-ordinate with the other Ministers in question and may not encroach upon the executive authority of any of such Ministers,

### National Housing Code

4. (1) The Minister must publish a code called the National Housing Code (in this section referred to as the "Code"). 20
- (2) The Code—
- (a) must contain national housing policy;
- (b) may, after consultation with every MEC and the national organisation representing municipalities as contemplated in section 163(a) of the Constitution, include administrative or procedural guidelines in respect of— 25
- (i) the effective implementation and application of national housing policy;
- (ii) any other matter that is reasonably incidental to national housing policy.
- (3) The Minister must furnish a copy of the Code to every provincial government and municipality. 30
- (4) If national housing policy is amended during any year, the Minister must—
- (a) as soon as possible, give notice of such amendment to every provincial government and municipality; and
- (b) within three months after the end of such year, publish a revised Code, and furnish a copy thereof to every provincial government and municipality. 35
- (5) Any new national housing policy applies notwithstanding that such policy has not yet been included in a revision of the Code.

### South African Housing Development Board

- 5.(1) A board called the South African Housing Development Board (in this section referred to as the "Board") is hereby established. 40
- (2) The Board—
- (a) may of its own accord, and must at the request of the Minister, advise the Minister on any matter relating to housing development; and
- (b) must monitor the implementation of national housing policy.
- (3)(a) The Board consists of a chairperson, a vice-chairperson and not more than 13 other members appointed by the Minister. 45
- (b) The members of the Board must be appointed only after—
- (i) the Minister has through the media and by "notice in the *Gazette* invited nominations of persons as candidates for the respective positions on the Board: and 50
- (ii) the parliamentary committees for housing of the National Assembly and the National Council of provinces have made recommendations to the Minister in relation thereto after a transparent and open process of considering persons so nominated.

- (c) The need for the Board to reflect broadly the race, gender and geographic composition of South Africa must be considered when members are appointed,
- (d) A member of the Board must—
- (i) be a fit and proper person; and
  - (ii) have knowledge, qualifications or experience in the field of housing development, 5
- (e) A member of the Board is, subject to paragraph (f), appointed for the period determined by the Minister at his or her appointment, but not more than three years, and may be reappointed on the termination of such period.
- (f) A member of the Board ceases to be a member if— 10
- (i) he or she resigns;
  - (ii) without the leave of the Board, he or she is absent from three consecutive meetings of the Board;
  - (iii) his or her estate is sequestrated or he or she applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966 (Act No. 28 of 1966); 15
  - (iv) he or she becomes of unsound mind;
  - (v) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine;
  - (vi) he or she becomes a member of Parliament, a provincial legislature, a Municipal Council, the Cabinet or the Executive Council of a province; or 20
  - (vii) the Minister terminates his or her office for reasons which are just and fair.
- (4) When—
- (a) the chairperson of the Board is absent or unable to fulfil any function of the chairperson, the vice-chairperson of the Board must act as chairperson during such absence or incapacity; and 25
  - (b) both the chairperson and vice-chairperson of the Board are absent or unable to fulfil any function of the chairperson, the Minister may designate any other member of the Board to act as chairperson during such absence or incapacity. 30
- (5)(a) The first meeting of the Board must be held at the time and place determined by the Minister, and all other meetings of the Board must be held at times and places determined by the chairperson of the Board. 30
- (b) The chairperson or, in his or her absence, the vice-chairperson—
    - (i) may convene a special meeting of the Board;
    - (ii) must convene such meeting within 14 days of the receipt of a written request signed by at least five members of the Board to convene such meeting. 35
- (c) The quorum for a meeting of the Board is more than 50 per cent of its members.
- (d) The Board determines, subject to the Minister's directions, the procedure at its meetings.
- (6) A member of the Board is paid the allowances determined by the Minister with the approval of the Minister of Finance. 40
- (7) The administrative functions of the Board must be performed by officers and employees of the Department.

#### **National housing data bank and information system**

6. (1) The Director-General must establish and maintain a national housing data bank (in this section referred to as the "data bank") and, associated therewith, a national housing information system (in this section referred to as the "information system"). 45
- (2) The objects of the data bank and information system are to—
- (a) record information for the purposes of the development, implementation and monitoring of national housing policy; 50
  - (b) provide reliable information for the purposes of planning for housing development;
  - (c) enable the Department to effectively monitor any aspect of the housing development process;
  - (d) provide macro-economic and other information with a view to integrating national housing policy with macro-economic and fiscal policy and the co-ordination of housing development with related activities; 55



- (e) serve and promote housing development and related matters; and  
 (f) collect, compile and analyse categorized data in respect of housing development: including, but not limited to, data categorized according to gender, race, age and geographical location.
- (3) For the purposes of subsection (1) the Director-General must— 5  
 (a) as far as possible obtain access to existing sources of information:  
 (b) co-ordinate information required for the purposes of the data bank with other official sources of information; and  
 (c) take into account the reasonable needs of provincial governments and municipalities for information regarding housing development. 10
- (4) For the effective performance of the duties imposed by subsection (3) the Director-General may— .  
 (a) require any provincial government or municipality to provide any information reasonably required for the purposes of the data bank or information system and determine the form and manner in, and time within, which such information is to be supplied: 15  
 (b) render to provincial governments and municipalities any assistance reasonably required for performing their duties contemplated in paragraph (a) and subsection (5);  
 (c) link the data bank or the information system or both the data bank and information system to any other data bank, information system or other system within or outside the public administration; 20  
 (d) subject to other legislation prohibiting or regulating the disclosure of information, limit or refuse access by any person or category of persons to any information in the data bank or information system, or in any part of that bank or system— 25  
 (i) that was obtained from—  
 (aa) any state source, if access by any such person or category of persons to such information in or at that source is limited or prohibited; or  
 (bb) any source other than a state source on the condition that such information would not be accessible to any such person or category of persons;  
 (ii) if the disclosure of such information would unfairly prejudice any person or give any person any unfair advantage over any other person;  
 (e) determine and collect, for the benefit of the Fund, fees payable for the supply of, or the granting of access to, any information or category of information in the data bank and information system; and 35  
 (f) take any steps reasonably necessary to carry out his or her duties or to achieve the objects of the data bank and information system,
- (5) Provincial governments and municipalities must— 40  
 (a) co-operate with the Director-General in performing his or her duties and exercising his or her powers in terms of this section:  
 (b) support the objects for which the data bank and information system have been established: and  
 (c) refrain from any act which may prejudice the effective functioning of the data bank and information system, 45

### PART 3

#### PROVINCIAL GOVERNMENT

##### Functions of provincial governments

7. (1) Every provincial government must, after consultation with the provincial organisations representing municipalities as contemplated in section 163(a) of the Constitution, do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy. 50

(2) For the purposes of subsection (1) every provincial government must—

- (a) determine provincial policy in respect of housing development;
- (b) promote the adoption of provincial legislation to ensure effective housing delivery;
- (c) take all reasonable and necessary steps to support and strengthen the capacity of municipalities to effectively exercise their powers and perform their duties in respect of housing development; 5
- (d) co-ordinate housing development in the province;
- (e) take all reasonable and necessary steps to support municipalities in the exercise of their powers and the performance of their duties in respect of housing development; 10
- (f) when a municipality cannot or does not perform a duty imposed by this Act, intervene by taking any appropriate steps in accordance with section 139 of the Constitution to ensure the performance of such duty; and
- (g) prepare and maintain a multi-year plan in respect of the execution in the province of every national housing programme and every provincial housing programme, which is consistent with national housing policy and section 3(2)(b), in accordance with the guidelines that the Minister approves for the financing of such a plan with money from the Fund. 15

### Provincial housing development boards

8. (1) (a) Despite the repeal of the Housing Arrangements Act, 1993 (Act No. 155 of 1993), by section 20-

- (i) every provincial board established under section 11(1) of that Act continues to exist under the name "provincial housing development board" for the province in question; and
- (ii) every executive committee appointed under section 11A(1)(a) of that Act continues to exist, 25

until abolished by a law of the relevant provincial legislature as contemplated in subsection (13) of this section.

(b) Every person who holds office in respect of such provincial board or executive committee continues in office for the unexpired portion of the period for which he or she was appointed or designated, unless the MEC determines otherwise. 30

(2) The MEC must fill any vacancy in any office in respect of a provincial housing development board and its executive committee in accordance with the applicable provisions of subsections (3) and (11).

(3)(a) A provincial housing development board is a juristic person and consists of not more than 18 members and, if that number is less than 18, the number of members must be divisible by three, and of which— 35

- (i) one-third must be nominated by the sectors and subsectors supplying or financing housing goods or services in the province in question;
- (ii) one-third must be nominated by those organisations and community-based groups in civil society representing the interests of consumers of housing goods or services in such province; and 40
- (iii) one-third must be nominated by those institutions regulating housing in such province and the political parties which are represented in the provincial legislature of the province. 45

(b) The members of a provincial housing development board are appointed by the MEC with the approval of the Executive Council of which he or she is a member.

(c) The members of a provincial housing development board must be appointed only after—

- (i) the MEC has through the media and by notice in the *Provincial Gazette* invited nominations of persons as candidates for the respective positions on such board; and 50
- (ii) the committee for housing of the provincial legislature has made recommendations to the MEC in relation thereto after a transparent and open process of considering persons so nominated. 55

(d) The need for a provincial housing development board to reflect broadly the race and gender composition of South Africa and the geographic composition of the province must be considered when members are appointed.

- (e) A member or alternate member of a provincial housing development board must—
- (i) be a fit and proper person; and
  - (ii) have knowledge, qualifications or experience in the field of housing development.
- (f) If a member of a provincial housing development board other than its chairperson or vice-chairperson so requests, the MEC may appoint an alternate member for that member to act in his or her stead when he or she is absent from a meeting of such board. 5
- (4)(a) A member of a provincial housing development board is, subject to paragraph (b), appointed for the period determined by the MEC at his or her appointment, but not more than three years, and may be reappointed on the termination of such period. 10
- (b) A member or alternate member of a provincial housing development board ceases to hold office if—
- (i) he or she resigns;
  - (ii) without the leave of such board, he or she is absent from three consecutive meetings of the board; 15
  - (iii) his or her estate is sequestrated or he or she applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966 (Act No. 28 of 1966);
  - (iv) he or she becomes of unsound mind;
  - (v) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine; 20
  - (vi) he or she becomes a member of Parliament, a provincial legislature, a Municipal Council, the Cabinet or the Executive Council of a province; or
  - (vii) the MEC, with the approval of the Executive Council of which he or she is a member, terminates his or her office for reasons which are just and fair. 25
- (5)(a) The MEC must designate one of the members of the provincial housing development board as the chairperson, and another member as the vice-chairperson, of the board.
- (b) When—
- (i) the chairperson of a provincial housing development board is absent or unable to fulfil any function of the chairperson, the vice-chairperson of such board must act as chairperson during such absence or incapacity; 30
  - (ii) both the chairperson and vice-chairperson of the board are absent or unable to fulfil any function of the chairperson, the MEC must designate any other member of the board to act as chairperson during such absence or incapacity. 35
- (6)(a) All meetings of a provincial housing development board must be held at times and places determined by its chairperson.
- (b) The chairperson or, in his or her absence, the vice-chairperson—
- (i) may convene a special meeting of the provincial housing development board;
  - (ii) must convene such meeting within 14 days of the receipt of a written request signed by not less than six members of the board to convene such meeting. 40
- (c) The quorum for a meeting of a provincial housing development board is more than 50 per cent of its members.
- (d) A provincial housing development board determines, subject to the directions of the MEC, the procedure at its meetings. 45
- (e)(i) A member or alternate member of a provincial housing development board may not be present during, or take part in, the discussion of, or the making of a decision on, any matter before such board in which—
- (aa) such member or his or her spouse, immediate family member, business partner or associate or employer, other than the State; or 50
  - (bb) the business partner or associate or employer, other than the State, of his or her spouse, 55
- has a direct or indirect financial interest.
- (ii) A member or alternate member of a provincial housing development board must, in the manner and at the intervals the MEC determines, disclose any direct or indirect financial interest—

- (aa) such member or his or her spouse, immediate family member, business partner or associate or employer, other than the State; or
- (bb) the business partner or associate or employer, other than the State, of his or her spouse,
- has in housing development. 5
- (iii) For the purposes of this paragraph—
- (aa) “spouse” includes a person with whom the member lives as if they were married or with whom the member habitually cohabits;
- (bb) “immediate family member” means a parent, child, brother or sister.
- (7)(a) A member or alternate member of a provincial housing development board, other than a person who is in the full-time employment of the State, must be appointed on the conditions of service determined by the MEC with the approval of the member of the Executive Council responsible for finance in the relevant province. 10
- (b) Conditions of service so determined may differ according to whether the person concerned is a member or an alternate member of such board or serves on the board by virtue of his or her office or on a full-time or part-time basis. 15
- (8) Subject to subsection (9), a provincial housing development board—
- (a) must administer every national housing programme and every provincial housing programme, which is consistent with national housing policy and section 3(2)(b), and for this purpose may, in accordance with such programme— 20
- (i) approve the financing thereof out of money paid into the provincial housing development fund as contemplated in section 12(2); and
- (ii) appoint such agents as are necessary to assist such board in the administration thereof; 25
- (b) may of its own accord, and must at the request of the MEC, advise the MEC on any matter relating to housing development in the province;
- (c) may exercise or perform any powers conferred or duties imposed by any law of the relevant provincial legislature.
- (9)(a) A provincial housing development board must, in the performance of its functions and in the management, administration and disposal of its assets, liabilities, rights and obligations, carry out the policy directives of the MEC consistent with national housing policy. 30
- (b) When so requested by the MEC, the chairperson of the provincial housing development board in question must report to the MEC on the activities of such board. 35
- (c) The MEC must, within 90 days after 31 December of each year, submit to the provincial legislature in question or, if such legislature is not then in session, within 14 days after the commencement of its next session, a report on the activities in terms of this Act of the previous year of—
- (i) the provincial housing development board; and 40
- (ii) the municipalities within the province in question which have been accredited under section 10(2).
- (10)(u) At the commencement of Part 6, the functions of the National Housing Board established by section 2 of the Housing Arrangements Act, 1993 (Act No. 155 of 1993), in respect of any housing assistance measure mentioned in section 3(5) of this Act, performed by that Board or a provincial board in terms of section 11(4)(a) of the Housing Arrangements Act, 1993, devolve upon a provincial housing development board in respect of those functions which were performed by that Board or such a provincial board in relation to the province of such provincial housing development board. 50
- (b) Any reference to the National Housing Board or a provincial board in any document in which such housing assistance measure is mentioned, must be construed as a reference to the provincial housing development board in question.
- (11)(a) A provincial housing development board may, with the approval of the MEC, appoint an executive committee consisting of the chairperson and vice-chairperson of such board, and not more than four other members of the board. 55
- (b) The chairperson or, in his or her absence, the vice-chairperson of the provincial housing development board presides at meetings of the executive committee or, in the absence of both the chairperson and vice-chairperson, the meeting must be chaired by a

member of such board designated by the members of the executive committee present at the meeting.

(c) The executive committee must perform such functions of the provincial housing development board as such board determines, but may not, except in so far as such board otherwise directs, alter or rescind any decision of such board. 5

(d) The provincial housing development board may alter or rescind any decision of the executive committee, but may not alter or rescind any such decision under or pursuant to which any person has acquired any right or incurred any obligation or liability, unless the person concerned has consented thereto.

(e) The quorum for a meeting of the executive committee is more than 50 per cent of 10 its members.

(f) The **Provincial** housing development board determines, subject to the directions of the MEC, the procedure at meetings of the executive committee.

(12) The administrative functions of a provincial housing development board and its executive committee must be performed by officers and employees of the provincial 15 administration in question.

(13)(a) A provincial legislature may by law provide for the abolition of its provincial housing development board, including the executive committee of such board.

(b) If a provincial legislature so abolishes such board, it must provide in such law 20 for—

(i) the disposal of any assets, liabilities, rights and obligations of such board in a manner consistent with sections 14 and 15;

(ii) a body of which the members are appointed by the MEC to perform the functions of such board in terms of this Act;

(iii) the appointment of the members of such body with consideration to the need 25 for such body to reflect broadly the race and gender composition of South Africa and the geographic composition of the province; and

(iv) the appointment of the chairperson, vice-chairperson and other members of such body only after—

(aa) the MEC has through the media and by notice in the *Provincial Gazette* 30 invited nominations of persons as candidates for the respective positions on such body; and

(bb) the committee for housing of the provincial legislature has made recommendations to the MEC in relation thereto after a transparent and 35 open process of considering persons so nominated.

## PART 4

### LOCAL GOVERNMENT

#### Functions of municipalities

9. (1) Every municipality must, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of 40 national and provincial housing legislation and policy to—

(a) ensure that—

(i) the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis;

(ii) conditions not conducive to the health and safety of the inhabitants of its 45 area of jurisdiction are prevented or removed;

(iii) services in respect of water, sanitation, electricity, roads, stormwater drainage and transport are provided in a manner which is economical} efficient;

(b) set housing delivery goals in respect of its area of jurisdiction; 50

(c) identify and designate land for housing development;

(d) create and maintain a public environment conducive to housing development which is financially and socially viable;

(e) promote the resolution of conflicts arising in the housing development 55 process;

(f) initiate, plan, co-ordinate, facilitate, promote and enable appropriate housing development in its area of jurisdiction:

(g) provide bulk engineering services, and revenue generating services in so far as such services are not provided by specialist utility suppliers: and

(h) plan and manage land use and development.

(2)(a) Any municipality may participate in a national housing programme in accordance with the rules applicable to such programme by— 5

(i) promoting a housing development project by a developer;

(ii) subject to paragraph (b), acting as developer in respect of the planning and execution of a housing development project on the basis of full pricing for cost and risk;

(iii) entering into a joint venture contract with a developer in respect of a housing development project; 10

(iv) establishing a separate business entity to execute a housing development project;

(v) administering any national housing programme in respect of its area of jurisdiction in accordance with section 10; 15

(vi) facilitating and supporting the participation of other role players in the housing development process.

(b) If a municipality has been accredited under section 10(2) to administer national housing programmed in terms of which a housing development project is being planned and executed, such municipality may not act as developer, unless such project has been approved by the relevant provincial housing development board. 20

(3)(a) A municipality may by notice in the *Provincial Gazette* expropriate any land required by it for the purposes of housing development in terms of any national housing programme, if—

(i) it is unable to purchase the land on reasonable terms through negotiation with the owner thereof; 25

(ii) it has obtained the permission of the MEC to expropriate such land before the notice of expropriation is published in the *Provincial Gazette*; and

(iii) such notice of expropriation is published within six months of the date on which the permission of the MEC was granted. 30

(b) Sections 1.6 to 15 and 18 to 23 of the Expropriation Act, 1975 (Act No. 63 of 1975), apply, with the changes required by the context, in respect of the expropriation of land by a municipality in terms of paragraph (a), and any reference in any of those sections—

(i) to the "Minister" and the "State" must be construed as a reference to the chief executive officer of the relevant municipality and the relevant municipality, respectively; 35

(ii) to "section 2" must be construed as a reference to this subsection; and

(iii) to "this Act" must be construed as a reference to this Act.

#### **Administration of national housing programmed by municipalities** 40

**10. (1)** Any municipality may apply in writing to the MEC in the form determined by the MEC to be accredited under subsection (2) for the purposes of administering one or more national housing programmed.

(2)(a) If the MEC is satisfied that the municipality which made an application under subsection (1) complies with the criteria for the accreditation of municipalities as determined by the Minister after consultation with the MEC, the MEC must accredit the municipality for the purposes of administering one or more of the national housing programmed mentioned in the application. 45

(b) Despite the repeal of the Housing Arrangements Act, 1993 (Act No. 155 of 1993), by section 20, any criteria determined under section 11B(2) of that Act are regarded to be criteria determined under paragraph (a), until amended or substituted under that paragraph. 50

(3)(a) Subject to the directions of the MEC consistent with the national housing policy, any municipality that has been accredited under subsection (2) may administer any national housing programme in respect of which accreditation has been granted. 55

(b) For the purposes of such administration, but subject to subsection (4), such municipality may exercise such powers and must perform such duties of the relevant

provincial housing development board as are necessary for the administration of such national housing programme.

(c)(i) Any municipality accredited under subsection (2) must be regularly reviewed by the MEC on the basis of adequate performance against the criteria for accreditation referred to in that subsection. 5

(ii) If any such municipality fails to so perform, the MEC may intervene and take the steps necessary to ensure adequate performance.

(4)(a) The MEC may, after consultation with the relevant provincial housing development board, out of money paid into the relevant provincial housing development fund as contemplated in section 12(2), allocate to any municipality accredited under subsection (2) and situated in the province in question such amounts as the MEC considers necessary. 10

(b) The officer designated as the accounting officer as contemplated in section 12(2)(b) must out of money allocated under paragraph (a) transfer to such municipality such money as required by it for the purposes of the administration of— 15

(i) the Housing Subsidy Scheme referred to in section 3(5)(a); and

(ii) any other national housing programme.

(c) Such accounting officer remains the accounting officer in respect of any money transferred in terms of paragraph (b)(i).

(d) A municipality must maintain separate accounts into which money transferred in terms of paragraph (b)(i) and (ii) must be deposited and out of which all disbursements in connection with the administration of the national housing programme in question must be made, 20

(e) Any disbursement of money transferred in terms of paragraph (b)(i) to a vendor as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), must be made by the municipality acting as the agent of the provincial administration in question. 25

(f)(i) The chief executive officer of such municipality must as soon as possible after, but within two months of 31 March in each year, submit detailed statements signed by that officer showing the results of the previous year's transactions and the balance sheets in respect of the accounts referred to in paragraph (d) to the officer designated as the accounting officer as contemplated in section 12(2)(b). 30

(ii) Such accounting officer must, within five months after the end of the financial year, incorporate such statements and balance sheets into the statements and balance sheets required to be prepared by that officer in terms of any applicable provincial legislation, 35

(g)(i) The books and statements of account and balance sheets in respect of the money transferred in terms of paragraph (b) must be audited by the Auditor-General.

(ii) The Auditor-General may require any person (including any person in the employ of the municipality in question) to make available for examination all books, registers and documents in his or her possession or under his or her control which would, in the opinion of the Auditor-General, facilitate the carrying out of such audit. 40

(5)(a) Any municipality accredited under subsection (2) must, in the performance of its functions contemplated in this section, carry out the policy directives of the MEC consistent with national housing policy including the rules of any applicable national housing programme. 45

(b) If requested to do so by the MEC, a municipality accredited under subsection (2) must report to the MEC on the activities of the municipality in terms of this section.

## PART 5

### FINANCING OF HOUSING DEVELOPMENT 50

#### South African Housing Fund

11. (1) The South African Housing Fund established by section 12B(1)(a) of the Housing Arrangements Act, 1993 (Act No. 155 of 1993), continues to exist for the purposes of financing activities in terms of this Act, despite the repeal of that Act by section 20. 55

- (2) The Fund consists of—
- (a) all money which immediately before the commencement of this Part stood to the credit of the Fund or, subject to this section, was payable to the Fund;
  - (b) all money appropriated by Parliament to strengthen the capital of the Fund; and
  - (c) contributions from any source for the purposes of housing development.
- (3) Despite anything to the contrary in the Exchequer Act, 1975 (Act No. 66 of 1975), all the available money of the Fund may be utilised for the purposes as set out in this Act.
- (4) Any money in the Fund which is not required for immediate use, must be invested with the Commissioner for Public Investments,
- (5)(a) The Director-General is—
- (i) for the purposes of the Exchequer Act, 1975, and the regulations made thereunder, the accounting officer in respect of the money in the Fund; and
  - (ii) responsible for the administration of the Fund.
- (b) The Director-General is not the accounting officer in respect of money after it has been paid out in accordance with section 12.
- (6) The financial year of the Fund is 1 April of any year to 31 March of the following year.
- (7)(a) The Director-General must as soon as possible after, but within four months of 31 March in each year, submit detailed statements signed by him or her showing the result of the previous year's transactions and the balance sheet of the Fund to the Minister.
- (b) The Minister must without delay submit to Parliament such statements and balance sheet.
- (8)(a) The books and statements of account and balance sheet of the Fund must be audited by the Auditor-General.
- (b) The Auditor-General may require any person (including any municipality, company or other body and any person in the employ of such municipality, company or body) to make available for examination all books, registers and documents in his or her possession or under his or her control which would, in the opinion of the Auditor-General, facilitate the carrying out of such audit.

#### **Allocation of money in Fund to provincial governments**

12. (1)(a) The Minister may allocate money out of the Fund for the purposes of financing the implementation in a province of any national housing programme and any provincial housing programme, which is consistent with national housing policy and section 3(2)(b).
- (b) The criteria for the allocation of money in terms of paragraph (a) must, subject to paragraph (c), be determined by the Minister after consultation with every MEC.
- (c) The Minister may, in determining the amount of any allocation in terms of paragraph (a) in respect of any particular province, take into account any credit balance in the relevant provincial housing development fund and the balance of any money payable to such fund as contemplated in subsection (4)(d).
- (2) Any money allocated under subsection (1)(a) must, subject to subsection (3), be paid into a provincial housing development fund to be established by provincial legislation, which legislation must provide for—
- (a) the money so paid to be withdrawn from such fund only for the purposes of the implementation in the province of national housing programmed and provincial housing programmed, which are consistent with national housing policy and section 3(2)(b);
  - (b) the designation of an officer of the provincial administration as the accounting officer in respect of the money in such fund, and for such officer to be responsible for the administration of the fund;
  - (c) the regulation of such accountability and administration, including reporting by such officer to the provincial legislature on all matters affecting such fund;
  - (d) the manner in which the accounts and records of such fund are to be kept, the preparation of detailed annual statements showing the results of the



transactions and the balance sheet of the fund and their submission to the provincial legislature by the MEC: and

(e) the auditing of the books and statements of account and balance sheet of such fund by the Auditor-General.

(3) Until a provincial housing development fund has been established as contemplated in subsection (2), the money allocated under subsection (1)(a) must be dealt with in accordance with section 13 of the Housing Arrangements Act, 1993 (Act No. 155 of 1993), despite its repeal by section 20.

(4)(a) Any money allocated under subsection (1)(a) must be paid into the relevant provincial housing development fund by the Director-General in such amounts as may from time to time be required for the purposes of the implementation in the relevant province of any national housing programme or any provincial housing programme, which is consistent with national housing policy and section 3(2)(b).

(b) The Director-General may not make any payment contemplated in paragraph (a) unless he or she has received a requisition from the accounting officer contemplated in subsection (2)(b) or an officer of the provincial administration designated for that purpose by that accounting officer, in which he or she has certified that the money is required to meet expenditure that is reasonably expected to be incurred within the period for which the requisition has been submitted.

(c) Such requisition must be submitted in the form, at the intervals and in respect of 20 the periods the Director-General determines.

(d) The balance of any money allocated under subsection (1)(a) in respect of a financial year which was not expended, remains payable to the provincial housing development fund in question and must, in accordance with this subsection, be paid into such fund when required for the purposes of the implementation in the relevant province 25 of any national housing programme or any provincial housing programme, which is consistent with national housing policy and section 3(2)(b).

## PART 6

### TERMINATION OF HOUSING ARRANGEMENTS

#### Abolition of National Housing Board

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13. The National Housing Board (in this Part referred to as the "former Board") established by section 2 of the Housing Arrangements Act, 1993 (Act No. 155 of 1993), is, subject to sections 8(10), 12(3), 14 and 15, hereby abolished.

#### Arrangements regarding assets and liabilities of National Housing Board

14. (1)(a) Movable property of the former Board, and all rights, liabilities and 35 obligations of that Board in respect of such movable property pass, subject to this subsection and section 15, to the provincial housing development board for the province in which such property is mainly utilised.

(b) If any such movable property was utilised in more than one province, the respective heads of the departments of the provinces in question must agree in which 40 province such property is mainly utilised.

(c) In the absence of such agreement, the province in which such movable property was mainly used must be determined by arbitration in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965).

(d) To achieve an equitable result such agreement or arbitration may provide for the 45 payment of compensation out of the provincial housing development fund of one province to the credit of the provincial housing development fund of another province.

(2)(a) Immovable property of the former Board, and all the rights, liabilities and obligations of that Board in respect of such immovable property, pass, subject to subsection (3) and section 15, to the provincial housing development board for the 50 province in which such property is situated.

(b) The Registrar of Deeds concerned must, at the request of a provincial housing development board to which immovable property or any registrable claim or right has passed in terms of this section and on submission to him or her of the relevant title deeds and other documents and a certificate contemplated in paragraph (c), make the necessary 55

endorsements in his or her registers and on the title deeds and other documents concerned to give effect to such passage.

(c) The head of department must, for the purposes of paragraph (b), issue a certificate to the effect that the immovable property, claim or right mentioned in the certificate is immovable property or a claim or right that has passed to the relevant provincial housing development board in terms of this section. 5

(d) No transfer duty, stamp duty or registration fee is payable in respect of a passage contemplated in paragraph (b).

(3)(a)(i) Any undeveloped land which has passed to a provincial housing development board in terms of subsection (2) must, subject to subparagraph (ii), be utilised for housing development in accordance with national housing policy and a housing development project approved by the MEC. 10

(ii) Any such land which, in the opinion of the provincial housing development board, is not or will not in the future be suitable for such utilization, must be sold by such board at a fair market value or, if it is not possible to so sell it, such land must be sold in the best interests of the State at a price approved by the MEC. 15

(b) Any dwelling or residential erf which has passed to a provincial housing development board in terms of subsection (2) and which is—

(i) suitable for letting or sale in terms of any national housing programme, must be let or sold by such board in accordance with such programme: 20

(ii) not suitable for letting or sale in terms of any national housing programme, must, subject to subsection (8), be let or sold by such board at a fair market value or, if it is not possible to so let or sell it, be leased or sold in the best interests of the State at a rental or price approved by the MEC.

(c) Any business premises or business erf which has passed to a provincial housing development board in terms of subsection (2), must be sold by such board at a fair market value or, if it is not possible to so sell it, such business premises or erf must be sold in the best interests of the State at a price approved by the MEC. 25

(d)(i) Any erf which has passed to a provincial housing development board in terms of subsection (2) and which has been set aside for use in connection with any service to be provided by a department of state or provincial administration, must be sold by such board at a fair market value to the department of state or provincial administration, as the case may be, having responsibility for the provision of the service concerned, unless such department or administration informs the board that the erf in question is not required for such use. 30

(ii) If it is not possible or feasible to sell such erf at a fair market value, it must be sold in the best interests of the State at a price approved by the MEC. 35

(iii) Any such erf which is not required by such department or provincial administration may be utilised by the provincial housing development board for housing development in accordance with national housing policy and a housing development project approved by the MEC. 40

(iv) If such erf is not required by such board for housing development, it must be sold at a fair market value or, if it is not possible to sell such erf at a fair market value, it must be sold in the best interests of the State at a price approved by the MEC.

(e) If a provincial housing development board wishes to alienate any immovable property that has passed to such board in terms of subsection (2), other than property contemplated in paragraphs (a) to (d), the board may do so at a fair market value or, if it is not possible for such property to be alienated at a fair market value, it must be alienated in the best interests of the State at a price approved by the MEC. 45

(f) The net proceeds of any sale, letting or alienation contemplated in paragraphs (a) to (e) must— 50

(i) be paid into the provincial housing development fund for the province in question or, if such fund has not been established when such net proceeds are received, be dealt with in accordance with section 13 of the Housing Arrangements Act, 1993 (Act No, 155 of 1993), despite its repeal by section 20; and 55

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(ii) be utilised for housing development in accordance with national housing policy and a housing development project approved by the MEC.

(g)(i) A project or scheme which immediately before the commencement of this section was in the process of execution by the former Board in terms of any law repealed by section 20 on land which has passed to a provincial housing development board in terms of subsection (2). must be duly completed by such board.

(ii) The cost of completing such project or scheme must be financed by a grant from money paid into the relevant provincial housing development fund as contemplated in section 12(2).

(iii) The rights, liabilities and obligations of the former Board arising out of any contract in connection with such project or scheme pass to such provincial housing development board.

(4)(a)(i) Any claim of the former Board arising out of a contract of sale of immovable property passes to the provincial housing development board for the province within which such property is situated.

(ii) The net proceeds of such claim must be—

(aa) paid into the provincial housing development fund for that province or, if such fund has not been established when such net proceeds are received, be dealt with in accordance with section 13 of the Housing Arrangements Act, 1993, despite its repeal by section 20; and

(bb) utilised for housing development in accordance with the national housing policy and a housing development project approved by the MEC.

(b) Any debt or other obligation of a municipality or the premier of a province towards the former Board in respect of any project or scheme which was financed by means of a loan, advance or other finance which was approved in terms of—

(i) the Housing Act, 1966 (Act No. 4 of 1966);

(ii) the Development and Housing Act, 1985 (Act No. 103 of 1985);

(iii) the Housing Act (House of Representatives), 1987 (Act No. 2 of 1987);

(iv) the Development Act (House of Representatives), 1987 (Act No. 3 of 1987);

or

(v) the Housing Development Act (House of Delegates), 1987 (Act No. 4 of 1987).

is hereby extinguished.

(c) Any movable and immovable property of the premier of a province acquired by means of a loan or advance or other finance contemplated in paragraph (b), passes to the provincial housing development board for such province.

(d)(i) Subsection (3)(a) to (e) applies, with the changes required by the context, in respect of any immovable property of a municipality or the premier of a province acquired by means of a loan, advance or other finance contemplated in paragraph (b).

(ii) The net proceeds of any letting or sale or other alienation in terms of subparagraph (i), read with subsection (3)(u) to (e), in respect of immovable property which was acquired by—

(aa) a municipality, must be paid into the separate operating account of such municipality referred to in section 15(5);

(bb) a premier of a province, must be paid into the provincial housing development fund for such province or, if such fund has not been established when such net proceeds are received, be dealt with in accordance with section 13 of the Housing Arrangements Act, 1993, despite its repeal by section 20.

(iii) The net proceeds of any letting or sale or other alienation referred to in subparagraph (ii) must be utilised for housing development in accordance with national housing policy and a housing development project approved by—

(aa) in the case of subparagraph (ii)(aa), the MEC after consultation with the provincial housing development board in question;

(bb) in the case of subparagraph (ii)(bb), the MEC.

(iv) Every municipality must, in accordance with the directives of the MEC, furnish

the MEC with monthly reports regarding the sale of immovable property by the municipality in terms of this paragraph, including the basis for the determination of selling prices.

(v) If the MEC is not satisfied with such basis for the determination of selling prices, the MEC may determine directives for this purpose. 5

(c)(i) A project or scheme which immediately before the commencement of this section was in the process of execution by a municipality or the premier of a province using money provided by means of a loan, advance or other finance which was approved in terms of any law referred to in paragraph (b), must be duly completed by the municipality or the provincial housing development board of that province, as the case may be. 10

(ii) The cost of completing such project or scheme must be financed by a grant from money paid into the relevant provincial housing development fund as contemplated in section 12(2).

(f)(i) The right of the former Board to recover any loan, advance or other finance granted to any natural person or housing utility company in any province in terms of any law referred to in paragraph (b), passes to the provincial housing development board for that province. 15

(ii) Any money recovered by the provincial housing development board by virtue of the right that so passes to that board, must be paid into its provincial housing development fund and must be utilised for housing development in accordance with the national housing policy and a housing development project approved by the MEC. 20

(g) If any juristic person provided any welfare facility using money lent to such juristic person by the former Board or a municipality out of any loan, advance or other finance which was approved under any law referred to in paragraph (b), the provincial housing development board to which the right to recover such loan has passed or the municipality, as the case may be, may, with the approval of the MEC in consultation with the member of the Executive Council responsible for welfare in the province in question, absolve such juristic person from its obligation to repay the loan or any part thereof. 25 30

(5)(a) Any rights, liabilities and obligations of the former Board arising out of any loan agreement or the issue of any debentures, bills or stocks pass to the national government.

(b)(i) Any shares or other interest in any company held by or vesting in the former Board in terms of section 10(1) of the Housing Arrangements Act, 1993, pass, subject to subparagraph (ii), to the national government. 35

(ii) Any shares in Lanok (Pty) Ltd held by the former Board must be disposed of by the Minister after consultation with the Executive Councils of the provinces of Western Cape and Northern Cape.

(c) Any rights, liabilities and obligations of the former Board arising out of any contract entered into between that Board and any person in terms of any national housing programme pass— 40

(i) in the case of a national contract, to each provincial housing development board;

(ii) in the case of a contract relating to a particular province, to the provincial housing development board of that province. 45

(d) Any rights, liabilities and obligations of the former Board arising out of the agreement between the Mortgage Indemnity Fund (Pty) Ltd and mortgage lenders in terms of the national relocation assistance programme pass to each provincial housing development board. 50

(6) For the purposes of this section any reference in any document to the National Housing Board must be construed as a reference to the provincial housing development board in question.

(7)(a) The net proceeds derived by a provincial housing development board or municipality from any municipal infrastructure that has passed to such provincial housing development board in terms of subsection (2) or has been provided by such municipality by means of a loan, advance or other finance contemplated in subsection (4)(b), must be utilised by the provincial housing development board or municipality, as the case may be, for housing development in accordance with national housing policy. 55

(b) Such housing development must be carried out in accordance with a housing development project approved by— 60

- (i) in the case of the provincial housing development board, the MEC;  
(ii) in the case of the municipality, the MEC after consultation with the provincial housing development board in question.
- (8) No rights, liabilities or obligations of any person are extinguished merely by reason of— 5
- (a) the abolition of the former Board by section 13;  
(b) any passage referred to in subsection (1) or (2); or  
(c) the extinction of any debt or other obligation by subsection (4)(b).
- (9)(a) The Minister must institute a national housing programme to phase out within one year of the commencement of this Act every housing subsidy granted in terms of— 10
- (i) the Housing Act, 1966;  
(ii) the Development and Housing Act, 1985;  
(iii) the Housing Act (House of Representatives), 1987;  
(iv) the Development Act (House of Representatives), 1987; or  
(v) the Housing Development Act (House of Delegates), 1987. 15
- (b) Such national housing programme must contain time limits to phase out the various categories of housing subsidies.
- (c) The Minister must report quarterly to the parliamentary committees for housing of the National Assembly and the National Council of Provinces on the progress with the implementation of such national housing programme. 20
- (10)(a) If the disposal of the assets, rights, liabilities and obligations of the former Board is not sufficiently dealt with in this section, the Minister may, after consultation with each MEC, issue such directives regarding the management and disposal thereof as are necessary in order to achieve the purposes of this section.
- (b) Any directives so issued must be consistent with this Act. 25

#### **Transfer of certain property from provincial housing development boards to municipalities**

15. (1)(a) Any movable property that has passed [o a provincial housing development board in terms of section 14(1), and any rights, liabilities and obligations in respect of such movable property, must, subject to this subsection and subsection (3), be transferred not later than a date determined by the Minister after consultation with the MEC, by such provincial housing development board to the municipality within whose area of jurisdiction such property is mainly utilised. 30
- (b) If any such movable property is utilised in the area of jurisdiction of more than one municipality, the head of department in the province in which the municipalities in question are situated must determine or, if such municipalities are not situated in the same province, the heads of the departments of the provinces in question, must agree on, in which municipality's area of jurisdiction such property is mainly utilised. 35
- (c) In the absence of an agreement contemplated in paragraph (b) or (d)(i) the municipality in whose area of jurisdiction such movable property is mainly used or the payment of compensation, as the case may be, must be determined by arbitration in accordance with the Arbitration Act, 1965 (Act No. 42 of 1965). 40
- (d) To achieve an equitable adjustment of the respective financial positions of municipalities in question— 45
- (i) the head of department or heads of departments referred to in paragraph (a) may direct and agree on, respectively, the payment of compensation by one municipality to another municipality; or
- (ii) arbitration referred to in paragraph (c) may determine the payment of compensation by one municipality to another municipality. 50
- (2)(a) Any immovable property which has passed to a provincial housing development board in terms of section 14(2) and has not already been sold or alienated as provided in section 14(3)(a) to (e), and any rights, liabilities and obligations in respect of such immovable property, must, subject to subsections (3) and (4), be transferred, not later than a date determined by the Minister after consultation with the MEC, by the provincial housing development board to the municipality within whose area of jurisdiction such property is situated. 55
- (b) If such immovable property is situated in the areas of jurisdiction of more than one municipality, the provincial housing development board in question must transfer the

property to the municipality agreed upon between the MEC and the municipalities in question.

(3) Movable or immovable property may only be transferred to a municipality in terms of subsection (1) or (2) if such municipality in the opinion of the MEC, after consultation with the municipality, has the capacity to administer such movable or 5 immovable property in accordance with national housing policy.

(4)(a) Section 14(3)(a) to (g) applies, with the changes required by the context, in respect of any land transferred to a municipality in terms of subsection (2).

(b) Any reference in section 14(3)(a) to (g) to a provincial housing development board and a provincial housing development fund must be construed as a reference to the 10 relevant municipality and the municipality's operating account as contemplated in subsection (5), respectively.

(c) The net proceeds of any letting, sale or other alienation in terms of paragraph (a) must be utilised by the municipality for housing development in accordance with national housing policy and a housing development project approved by the MEC after 15 consultation with the provincial housing development board in question.

(5) A municipality to which any movable or immovable property is transferred in terms of this section must maintain a separate operating account through which all matters contemplated in this section and section 16 must be transacted,

(6) Section 14(2)(b), (c) and (d) applies, with the changes required by the context, to 20 immovable property or a registrable claim or right transferred in terms of this section, and the reference to the head of department in section 14(2)(c) must be construed as a reference to the chief executive officer of the municipality in question.

(7) The redundancy or not of any person employed in the provincial administration of a province arising out of the transfer of any movable or immovable property to a 25 municipality, as contemplated in this section must be determined in accordance with the laws governing the public service,

#### **Transfer of money in certain funds to municipal operating accounts**

**16. (1)** Any money which at commencement of this section stands to the credit of or is payable to- 30

- (a) the Community Facility Account;
- (b) the Rent Reserve Fund; or
- (c) the Maintenance and Renewal Fund.

of a municipality, which funds have been established by virtue of the relevant law referred to in section 14(4)(b), must be transferred to the separate operating account of 35 such municipality referred to in section 15(5),

(2) The money so transferred must be utilised by a municipality for housing development in accordance with the national housing policy and a housing development project approved by the MEC after consultation with the provincial housing development board in question. 40

#### **Termination of Discount Benefit Scheme**

**17. (1)** Any person who is eligible for a discount in terms of the Guidelines for Discount Benefit Scheme to promote Home Ownership mentioned in section 3(5)(b) (in this section referred to as "the Scheme") in respect of immovable property which—

- (a) passes to a provincial housing development board in terms of section 14(2) or 45 (4)(c) or transfers to a municipality in terms of section 15(2); or
- (b) was acquired by a municipality by means of a loan, advance or other finance contemplated in section 14(4)(b).

must lodge a written claim for the granting of such discount with the relevant provincial housing development board or municipality, as the case may be, on or before the date 50 determined by the MEC by notice in the *Official Gazette* of the province in question for the lapsing of the Scheme in respect of the province.

(2) A date determined in terms of subsection (1) may not be later than a date determined by the Minister after consultation with the MEC concerned.

(3) Any claim for a discount received by a provincial housing development board or 55 municipality before the date determined in terms of subsection (1) must, despite

subsection (4), be duly considered and disposed of by such provincial housing development board or municipality, as the case may be, in accordance with the Scheme.

(4) The Scheme lapses in respect of a province on the applicable date determined in terms of subsection (1).

## PART 7

### GENERAL PROVISIONS

#### Delegation

**18.** (1) The Director-General, or the head of department may, for the effective execution of the provisions of this Act—

(a) delegate any power conferred on him or her by this Act; or 10

(b) assign any duty imposed upon him or her by this Act, except any duty as accounting officer in terms of section 11 (5) or 12(2)(b),

to an officer or employee of the department or the relevant provincial administration, as the case may be, either in his or her personal capacity or by virtue of the rank he or she holds or the post he or she occupies, 15

(2) Any officer or employee to whom any power has been so delegated or duty has been so assigned, must exercise such power or perform such duty subject to the conditions that the person who made the delegation or assignment considers necessary.

(3) Any such delegation or assignment—

(a) must be in writing; 20

(b) does not prevent the person who made the delegation or assignment from exercising such power or performing such duty himself or herself; and

(c) may at any time be withdrawn in writing by such person.

#### Annual report

**19.** (1) The Director-General must annually submit to the Minister a report on 25 activities in terms of this Act.

(2) The Minister must without delay submit such report to Parliament.

#### Repeal of laws

20. Subject to this Act, the laws mentioned in the Schedule are hereby repealed to the extent indicated in the third column thereof. 30

#### Short title and commencement

**21.** This Act is called the Housing Act, 1997, and takes effect on a date determined by the President by proclamation in the *Gazette*.

## Schedule

## LAWS REPEALED BY SECTION 20

No. and year of law	Short title	Extent of repeal
Act No. 4 of 1966	Housing Act, 1966	The whole.
Act No. 47 of 1967	Housing Amendment Act, 1967	The whole.
Act No. 80 of 1968	Housing Amendment Act, 1968	The whole.
Act No. 65 of 1969	Housing Amendment Act, 1969	The whole.
Act No. 730, 1970	Housing Amendment Act, 1970	The whole.
Act No. 19 of 1971	Housing Amendment Act, 1971	The whole.
Act No. 40 of 1975	Housing Amendment Act, 1975	The whole.
Act No. 124 of 1977	Housing Amendment Act, 1977	The whole.
Act No. 21 of 1978	Housing Amendment Act, 1978	The whole.
Act No. 76 of 1979	Slums Act, 1979	The whole.
Act No. 109 of 1979	Housing Amendment Act, 1979	The whole.
Act No. 11 of 1980	Housing Amendment Act, 1980	The whole.
Act No. 28 of 1982	Housing Amendment Act, 1982	The whole.
Act No. 63 of 1983	Housing Amendment Act, 1983	The whole.
Act No. 72 of 1984	Housing Amendment Act, 1984	The whole.
Act No. 103 of 1985	Development and Housing Act, 1985	The whole.
Act No. 49 of 1986	Housing Amendment Act, 1986	The whole.
Act No. 68 of 1986	Abolition of Influx Control Act, 1986	Section 16
Act No. 2 of 1987	Housing Act (House of Representatives), 1987	The whole.
Act No. 3 of 1987	Development Act (House of Representatives), 1987	The whole.
Act No. 4 of 1987	Housing Development Act (House of Delegates), 1987	The whole.
Act No. 97 of 1987	Housing Amendment Act, 1987	The whole.
Act No. 43 of 1989	Development and Housing Amendment Act (House of Assembly), 1989	The whole.
Act No. 94 of 1989	Housing Amendment Act (House of Representatives), 1989	The whole.



## Act No. 107.1997

## HOUSING ACT, 1997

No. and year of law	Short title	Extent of repeal
Act No. 95 of 1989	Development Amendment Act (House of Representatives), 1989	The whole
Act No. 91 of 1990	Housing and Development Amendment Act (House of Representatives), 1990	The whole.
Act No. 62 of 1992	Development and Housing Amendment Act (House of Assembly), 1992	The whole
Act No. 134 of 1992	Provincial and Local Authority Affairs Amendment Act, 1992	Sections 2, 3 and 4.
Act No. 56 of 1993	Local Government Affairs Amendment Act, 1993	Sections 25 and 26.
Act No. 76 of 1993	Shortened Registration Procedures of Land Amendment Act (House of Representatives, 1993	The whole.
Act No. 101 of 1993	Housing Amendment Act, 1993	The whole.
Act No. 108 of 1993	General Second Amendment Act, 1993	Section 10.
Act No. 155 of 1993	Housing Arrangements Act, 1993	The whole.
Act No. 191 of 1993	Housing Matters Amendment Act, 1993	The whole
Act No. 198 of 1993	Development and Housing Amendment Act (House of Assembly), 1993	The whole
Act No. 199 of 1993	Housing Development Amendment Act (House of Delegates), 1993	The whole.
Act No. 8 of 1994	Housing Amendment Act, 1994	The whole.
Act No. 33 of 1994	Housing Second Amendment Act, 1994	The whole.
Act No. 67 of 1995	Development Facilitation Act, 1995	The entries in the Schedule in respect of Act 2 of 1987 and Act 3 of 1987.
Act No. 6 of 1996	Housing Amendment Act, 1996	The whole.
Act No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of the Courts Act, 1996	Sections 34 to 38 and 83 m 85.