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**GENERAL NOTICE**

**Housing, Department of**

*General Notice*

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## GENERAL NOTICE

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### NOTICE 1526 OF 2006

## DEPARTMENT OF HOUSING

### SOCIAL HOUSING BILL, 2006

The Department of Housing hereby publishes the draft Social Housing Bill, 2006 for public information, discussion and comment.

Interested persons and, institutions are invited to submit written comment on the draft Bill on or before **4 December 2006** to the Director-General, Department of Housing, for the attention of-

**Mr R Thatcher**

Department of Housing

Private Bag X644

PRETORIA

0001

Tel (012) 421 1607

Fax (012) 421 1328

E-mail: [Richard@housing.gov.za](mailto:Richard@housing.gov.za)

Office No. 504

Govan Mbeki House, 240 Walker Street

Sunnyside

PRETORIA

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REPUBLIC OF SOUTH AFRICA

**SOCIAL HOUSING BILL, 2006**

(MINISTER OF HOUSING)

[ B - 2006 ]

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## BILL

To promote and establish a sustainable social housing environment; to define the functions of national, provincial and local governments in respect of social housing; to provide for the establishment of the Social Housing Regulatory Authority regulating all social housing institutions obtaining or having obtained public funds; to allow for the undertaking of approved projects by other delivery agents with the benefit of public money; to give statutory recognition to social housing institutions; and to provide for matters incidental thereto.

### PREAMBLE

**WHEREAS**, in terms of section 26(1) of the Constitution everyone has the right to have access to adequate housing;

**AND WHEREAS**, in terms of section 26(2) of the Constitution the State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

**AND WHEREAS**, in terms of section 2(1)(a) of the Housing Act, 1997 (Act No. 107 of 1997) national, provincial and local spheres of government must give priority to the needs of the poor in respect of housing development;

**AND WHEREAS**, all three spheres of government must, in terms of section 2(1)(e)(iii) of the Housing Act, 1997, promote 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;

**AND WHEREAS**, all three spheres of government must promote higher density in respect of housing development to ensure the economical utilisation of land and services (section 2(1)(e)(vii) of the Housing Act, 1997);

**AND WHEREAS**, there is a need for social housing to be regulated and put on a firm and sustainable footing;

**AND WHEREAS**, there is a dire need for affordable rental housing for lower and medium income households who cannot access rental housing in the open market;

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:

## CHAPTER 1

### DEFINITIONS

#### 1. Definitions -

In this Act, unless the context indicates otherwise –

“**accreditation**” means the process of application by a social housing institution, the screening, evaluation and conditional approval of accreditation by the Regulatory Authority that will, amongst other things, allow such institution access to grants available under the social housing programme;

“**approved project**” means a social housing project finally approved by the provincial government in respect of a designated restructuring zone pursuant to an application for capital grant funding to undertake the acquisition, development, conversion or upgrading of buildings for social housing;

“**capital grant**” means the capital grant contemplated in the social housing policy;

“**Department**” means the Department of Housing;

“**Department’s budget**” means such portion of the money appropriated to the National Department of Housing out of the National Revenue Fund in terms of the annual Appropriation Act, which is specifically earmarked for the financing of any national housing programme and any provincial housing programme which is consistent with national housing policy and section 3(2)(b) of the Housing Act, 1997 (Act No. 107 of 1997);

“**Director-General**” means the Director-General of the Department of Housing;

“**house rules**” means the rules in relation to the control, management, administration, use and enjoyment of the property of a social housing institution;

“**institutional investment grant**” means one or more of the capacity building grants contemplated in the social housing policy;

“**institutional investment plan**” means a training and skills development plan which is a component of the social housing investment plan intended to ensure that social housing institutions acquire the expertise, skills and operational capacity to manage the institution on



a sustainable basis and to produce and manage approved projects;

**“investment criteria”** means regulations indicating the criteria against which the Regulatory Authority may make investments in social housing institutions;

**“lease agreement”** means the standard lease agreement utilised by a social housing institution, including the house rules;

**“maladministration”** means non-compliance with the provisions of this Act or a situation, or condition indicating substantial financial, governance or management failure as contemplated in section 12(1);

**“MEC”** means the member of the Executive Council of a province responsible for housing;

**“Minister”** means the Minister of Housing;

**“National Housing Finance Corporation”** means the National Housing Finance Corporation incorporated as a public company in terms of the Companies Act, 1973 (Act No. 61 of 1973);

**“national housing programme”** means a programme contemplated in section 3(4)(g) of the Housing Act, 1997;

**“other delivery agent”** means an entity other than a social housing institution which may undertake an approved project, excluding a provincial government or a municipality;

**“prescribe”** means prescribe by the Minister by regulation or prescribe by the Regulatory Authority in its rules, as the case may be;

**“provincial government”** means a provincial government, acting through the MEC for housing;

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No.1 of 1999);

**“public funds”** means the institutional subsidy or any other government subsidy utilised for creation of housing stock or any funding provided pursuant to the provisions of this Act;

**“qualifying criteria”** means the criteria to be applied by the Regulatory Authority for purposes of the accreditation of a social housing institution as prescribed by the Minister;

**“regulation”** means a regulation prescribed by the Minister under this Act;

**“Regulatory Authority”** means the Social Housing Regulatory Authority established in terms of section 7 of the Act;

**“restructuring zone”** means a geographic area identified by the municipality, supported by provincial government and designated by the Minister in the *Gazette* for targeted, focused investment in approved projects;

**“social housing”** means a rental or co-operative housing option for low income persons at a level of scale and built form which requires institutionalised management and which is provided by social housing institutions or other delivery agents in approved projects in designated restructuring zones with the benefit of public funding as contemplated in this Act;

**“social housing institution”** or **“institution”** means an institution accredited or provisionally accredited under this Act which carries or intends to carry on the business of providing rental and co-operative housing options for low to medium income persons (excluding immediate individual ownership and a contract as defined under the Alienation of Land Act, 1981 (Act No. 68 of 1981)), on an affordable basis, ensuring quality and maximum benefits for residents, and managing its housing stock over the long term;

**“social housing investment plan”** means a corporate plan and budget as required by the Public Finance Management Act comprising a capital investment plan and an institutional investment plan for the institutional an capital investment activity of the Regulatory Authority for purposes of the social housing programme, to be prepared annually by the Regulatory Authority and approved by the Minister;

**“social housing policy”** means the official social housing policy as determined by the Minister in terms of section 3(2) of the Housing Act, 1997;

**“social housing programme”** means the national housing programme for social housing, instituted by the Minister in terms of section 3(4)(g) of the Housing Act, 1997;

**“social housing regulatory plan”** means a corporate plan and budget as required by the Public Finance Management Act for the regulatory activity of the Regulatory Authority in respect of the social housing programme, to be prepared annually by the Regulatory Authority and approved by the Minister; and

**“this Act”** includes the regulations, any rules, directives or instructions made under it.

## CHAPTER 2

### GENERAL PRINCIPLES, ROLES AND RESPONSIBILITIES

#### 2. General principles applicable to social housing

(1) In giving priority to the needs of low and medium income households in respect of social housing development, National, Provincial and Local spheres of Government and social housing institutions must –

- (a) ensure their housing programmes are responsive to local housing demands and in the process give special priority to the needs of women, children, disabled persons, the elderly and vulnerable groups;
- (b) support the economic development of low income communities by ensuring that they are close to job opportunities, markets and transport and by stimulating job opportunities to emerging entrepreneurs in the housing services and construction industries;
- (c) afford residents the necessary dignity, privacy and a clean, healthy and safe environment;
- (d) not discriminate against residents on any of the grounds set out in section 9 of the Constitution, including individuals affected by HIV/AIDS;
- (e) consult meaningfully with interested individuals, communities and financial institutions in all phases of social housing development;
- (f) ensure the sustainable and viable growth of affordable social housing as an objective of housing policy;
- (g) facilitate the involvement of residents and key stakeholders through meaningful consultation, information sharing, education, training and skills transfer, thereby meaningfully empowering residents;
- (h) ensure secure tenure for the residents in social housing institutions, on the basis of the general provisions governing the relationship between tenants and landlords as set out in the Rental Housing Act, 1999 (Act No. 50 of 1999);
- (i) promote -

- (i) an environment which is conducive to the realisation of the roles, responsibilities and obligations by all role players entering the social housing market;
- (ii) training opportunities for stakeholders and interested parties who wish to enter the social housing market;
- (iii) the establishment, development and maintenance of socially and economically viable communities to ensure the elimination and prevention of slums and slum conditions;
- (iv) social, physical and economic integration of housing development into existing urban and inner-city areas through the creation of quality living environments;
- (v) integration of the built environment as well as social and physical integration;
- (vi) medium to higher density in respect of social housing development to ensure the economical utilisation of land and services;
- (vii) provision of social, community and recreational facilities close to social housing development;
- (viii) the expression of cultural identity and diversity in social housing development;
- (ix) suitable location of social housing stock with respect to employment opportunities;
- (x) the conversion or upgrading of suitable residential and non-residential buildings for social housing use;
- (xi) incentives to ensure that social housing institutions and other delivery agents enter the social housing market;
- (xii) understanding and awareness of social housing processes;
- (xiii) transparency, accountability and efficiency in the administration and management of social housing stock;
- (xiv) best practices and minimum norms and standards in relation to the delivery and management of social housing as a sector;
- (xv) institutional capacity to support social housing initiatives;

- (xvi) the creation of sustainable, viable and independent housing institutions responsible for providing, developing, holding or managing social housing stock; and
- (xvii) the use of public funds in such a manner that stimulates or facilitates private sector investment and participation in the social housing sector.

(2)(a) The Minister may, by notice in the *Gazette*, prescribe –

- (i) any principle for social housing development in addition to, and consistent with, the principles set out in subsection (1); and
- (ii) any principle set out in subsection (1) 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.

(3)(a) A list of notices published in terms of subsection (2)(b) 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..

(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
- (ii) any right or liability acquired or incurred in terms of such principle or provision before it so ceased to have effect.

### **3. Roles and responsibilities of National Government**

(1) National government, acting through the Minister, must –

- (a) create and uphold an enabling environment for social housing, by providing the legislative, regulatory, financial and policy framework for the delivery of social housing;

- (b) ensure compliance with its constitutional responsibilities;
  - (c) address issues that affect the growth, development or sustainability of the social housing sector;
  - (d) establish with provinces and municipalities institutional capacity to support social housing initiatives;
  - (e) institute and fund the social housing programme as a national housing programme as contemplated in section 3(4)(g) of the Housing Act, 1997 (Act No. 107 of 1997), to promote the development and supply of social housing stock for low to medium income persons;
  - (f) designate restructuring zones submitted by provinces and identified by municipalities and specifically provided for in a municipality's integrated development plan contemplated in section 25 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and when appropriate, after due notice in the *Gazette*, withdraw such designation;
  - (g) establish capital and institutional investment grants;
  - (h) review and approve the social housing investment plan and social housing regulatory plan;
  - (i) ensure and make available the funds from the Department's budget for the operational costs and commitments of the Regulatory Authority in accordance with the approved social housing investment plan and social housing regulatory plan, respectively; and
  - (j) monitor the Regulatory Authority and hold it accountable.
- (2) The costs and expenses connected with the implementation of this Act must be defrayed from money appropriated by Parliament to the Department for that purpose.

#### **4. Roles and responsibilities of Provincial Government**

- (1) Provincial government, acting through the MEC, must –
- (a) ensure fairness, equity and compliance with national and provincial social housing norms and standards;
  - (b) ensure the protection of consumers through creating awareness of consumer's

rights and obligations;

- (c) facilitate sustainability and growth in the social housing sector;
- (d) mediate in cases of conflict between a social housing institution or other delivery agent and a municipality, if required;
- (e) agree on proposed restructuring zones with the Minister for purposes of the social housing investment plan;
- (f) monitor project level compliance;
- (g) approve, allocate and administer the capital grants, as accommodated in the social housing investment plan, in approved projects;
- (h) monitor progress in terms of the grant allocations process; and
- (i) administer the social housing programme contemplated in section 3(1)(e), and may for this purpose approve –
  - (i) any projects in respect thereof; and
  - (ii) the financing thereof out of money paid into the accredited bank account of the province as contemplated in section 17(3); and
- (j) develop the capacity of municipalities in respect of social housing.

(2) A provincial government may not intervene in the governance or management of social housing institutions, and the Regulatory Authority, subject to the provisions of section 11(3)(k), may not intervene in the monitoring of social housing projects.

## **5. Roles and responsibilities of Municipalities**

A municipality must, where there is a demand for social housing within its municipal area, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps, within the national and provincial legislative, regulatory and policy framework, to –

- (a) facilitate social housing delivery in its area of jurisdiction;
- (b) encourage the development of new social housing stock and the upgrading of existing stock or the conversion of existing non-residential stock;
- (c) provide access –
  - (i) to land and buildings for social housing development in approved

restructuring zones;

- (ii) for social housing institutions to acquire municipal rental stock;
- (iii) to municipal infrastructure and services for approved projects in approved restructuring zones;

and, to the extent permitted under the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) and the Local Government: Municipal Systems Act, 2000, on a preferential basis;

- (d) initiate and motivate the identification of restructuring zones; and
- (e) enter into performance agreements with social housing institutions.

## 6. Roles and responsibilities of other role players

(1) Subject to such directives as the Minister may issue from time to time *by notice in the Gazette*, the National Housing Finance Corporation, in respect of social housing, must -

- (a) provide improved access to loan funding;
- (b) make available to the Regulatory Authority when requested thereto such financial information to enable it to assess the institutional health and financial sustainability of social housing institutions;
- (c) facilitate, or where possible, provide access to guarantees for loan funding from financial institutions;
- (d) explore and support mechanisms aimed at gearing public funding for social housing; and
- (e) conclude an agreement with the Regulatory Authority aimed at avoiding the duplication of effort and overregulation of social housing institutions.

(2) Other delivery agents may undertake approved projects in restructuring zones with the benefit of public funding to the extent determined in the social housing programme pursuant to agreements concluded with the Regulatory Authority as contemplated in sections 11(3)(a) and 18(1)(b)(i).

(3) Other delivery agents are not subject to the regulatory powers of the Regulatory Authority referred to in section 12, but are subject to the terms and conditions contained in agreements concluded with the Regulatory Authority referred to in subsection (2).



## CHAPTER 3

### SOCIAL HOUSING REGULATORY AUTHORITY

#### 7. Social Housing Regulatory Authority

The Social Housing Regulatory Authority is hereby established as a juristic person.

#### 8. Composition of Regulatory Authority

(1) The Regulatory Authority consist of –

- (a) a Council, appointed in accordance with section 9, which is responsible for the governance of the Regulatory Authority;
- (b) a Chief Executive Officer appointed by the Council, with the approval of the Minister, who shall be responsible for the day to day management of the affairs of the Regulatory Authority;
- (c) a Corporate Services Manager appointed by the Chief Executive Officer responsible for financial management, including corporate management services;

(2) The Chief Executive Officer and the Corporate Services Manager shall serve as executive members of the Council.

#### 9. Appointment of Council

(1) The Council shall consist of at least seven and no more than twelve fit and proper persons who have knowledge, experience or qualifications in the field of social and rental housing, regulation or other competencies for the proper governance of the Regulatory Authority.

(2) Members of the Council shall serve in a non-executive capacity and be appointed only after the Minister has through the media and by notice in the *Gazette* invited nominations

of persons as candidates for the respective positions on the Council.

(3) A member of the Council is appointed for the period determined by the Minister at his or her appointment, but not exceeding three years at a time, and may, subject to subsection (2), be reappointed on the termination of that period.

(4) The Minister may at any time terminate the membership of a member of the Council for reasons which are just and fair.

(5) A member of the Council other than a person who is in the full-time employment of the State, is paid an allowance determined by the Minister with the approval of the Minister of Finance.

(6) A member of the Council ceases to be a member if-

- (a) he or she resigns;
- (b) his or her estate is sequestrated;
- (c) he or she becomes of unsound mind;
- (d) he or she is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (e) he or she becomes an employee or director of a social housing institution, a member of Parliament, a provincial legislature, a municipal council, the cabinet or the Executive Council of a Province; or
- (f) he or she has failed to attend three consecutive meetings, without apology or justified excuse.

(7) The Council must adopt standing instructions to ensure compliance with the provisions of this Act, the Public Finance Management Act, 1999 (Act No.1 of 1999) and any other legislation applicable to the Regulatory Authority.

(8) The Council may appoint such committees as it may consider appropriate for fulfilling its responsibilities under the Act and to ensure proper governance of the Regulatory Authority and may delegate such functions as it may consider appropriate, including any function under section 12, to such committee.

(9) The Council shall prescribe the necessary matters and procedures relating to meetings of the Council.

(10) The quorum for any meeting of the Council shall be at least 50% of the members.

**10. Staff**

(1) The staff of the Regulatory Authority shall consist of –

- (a) senior managers responsible for the necessary activities of the Regulatory Authority such as accreditation, compliance, institutional investment, capital investment of the Regulatory Authority; and
- (b) any other persons,

appointed by the Chief Executive Officer on the salary, terms and other conditions determined by him or her to perform the work incidental to the carrying out of its functions by the Regulatory Authority.

**11. Functions and powers of the Regulatory Authority**

(1) The Regulatory Authority must, subject to the provisions of this Act -

- (a) promote the development and awareness of social housing;
- (b) provide advice and support for the Department in its development of policy for the social housing sector, and facilitate national social housing programmes;
- (c) advise the Minister on developments in the social housing sector;
- (d) promote an enabling environment for the growth and development of the social housing sector;
- (e) provide best practice information and research on the status of the social housing sector;
- (f) support provincial governments with the approval of project applications by social housing institutions;
- (g) assist, where requested, in the process of the designation of restructuring zones;
- (h) enter into agreements with provincial government and the National Housing Finance Corporation to ensure co-ordinated exercise of powers; and
- (i) perform any other function or exercise any other power that the Minister

may prescribe.

(2) The Regulatory Authority must -

- (a) annually, in accordance with the Public Finance Management Act, prepare and submit the social housing investment plan, including both capital and institutional investment, and the social housing regulatory plan, to the Minister;
- (b) annually, in accordance with the Public Finance Management Act, prepare and submit annual financial statements and an annual report to the Minister on its performance in respect of the social housing investment and regulatory plans, respectively, during the preceding year; and
- (c) generally comply with the provisions of the Public Finance Management Act and regulations applicable to public entities, and its mandate as contemplated in section 3(4) (h) of the Housing Act, 1997

(3) The Regulatory Authority must, subject to the provisions of this Act -

- (a) provide financial assistance to social institutions through grants to service providers accredited by the Regulatory Authority to enable them to develop institutional capacity, gain accreditation as social housing institutions, and to submit viable project applications;
- (b) accredit institutions meeting accreditation criteria as social housing institutions;
- (c) maintain a register of social housing institutions with the prescribed details which is open for inspection by the public at the premises of the Regulatory Authority during normal business hours against payment of the prescribed fee and annually provide a copy thereof to Treasury and the Department;
- (d) enter into suitable agreements with social housing institutions and other delivery agents for the protection of Government's investment in social housing;
- (e) conduct compliance monitoring through regular inspections and enforce compliance, where necessary through the exercise of its powers set out in section 12;

- (f) intervene in the affairs of a social housing institution in cases of maladministration, and take such steps as are deemed necessary to rectify such maladministration as contemplated in section 12;
  - (g) approve, administer and disburse institutional investment grants and capital grants and obtain applications for such grants through engagement with provincial governments and municipalities;
  - (h) consider applications from social housing institutions to dispose of properties developed, refurbished or purchased with the assistance of public funding and approve or refuse applications on the basis of proposals' compliance with the investment criteria forming part of the regulations;
  - (i) consider applications from social housing institutions to relinquish their accreditation and be removed from the public register of social housing institutions and approve or refuse applications on the basis of compliance with the regulations principles and any rules made by the Regulatory Authority regarding de-registration;
  - (j) consider applications from social housing institutions to amend their lease agreements and approve or refuse such applications on the basis of the regulations;
  - (k) instruct a social housing institution not to accept a social housing project allocated to it where the Regulatory Authority is of the opinion that the social housing institution will not be able to complete the project successfully or that it will undermine the social housing institution's viability; and
  - (l) do all things necessary to ensure good governance and sustainability of social housing institutions.
- (4) The Regulatory Authority may subject to the provisions of this Act and by notice in the *Gazette* -
- (a) make rules, not in conflict with the regulations -
    - (i) giving effect and detailed content to the regulations;
    - (ii) prescribing necessary standards, ratios, procedures,

- requirements, forms and returns;
  - (iii) further regulating the conduct of social housing institutions;
  - (iv) prescribing procedures for compliance monitoring and the enforcement of compliance, including intervention in the affairs of social housing institutions; or
  - (v) specifically authorised or required by regulation;
- (b) prescribe, after consultation with the Minister, any matter which is necessary or desirable to be prescribed by the Regulatory Authority in order to achieve the objectives of this Act, including the prescription of penalties and powers of intervention; and
- (c) issue such directives, instructions and circulars as may necessary for the exercise of its functions under this Act.
- (5) The Regulatory Authority may, subject to the provisions of this Act -
- (a) establish such committees as may be necessary to meet its objectives;
  - (b) delegate its powers to committees and officers, on such terms and conditions as may be approved by the Council;
  - (c) conclude such contracts and institute such proceedings as may be necessary for the exercise of its powers and fulfillment of its functions under this Act.

## 12. Powers of intervention

(1) If the Regulatory Authority, following an inspection, investigation or review by the Regulatory Authority, finds non-compliance with the provisions of this Act or a need for intervention in view of the financial, governance or management situation, condition or failure of the social housing institution, a report must be prepared and the social housing institution must be instructed to take the remedial action specified in a notice to the social housing institution.

(2) A social housing institution under an instruction under subsection (1) may be required by the Regulatory Authority to obtain specified support to rectify such non-compliance, situation, condition or failure.

(3) The Regulatory Authority may make available funds through the social housing investment plan to assist in meeting the costs of any such support.

(4) If the social housing institution is unwilling to accept the instruction, or is not accepting the specified support, the Regulatory Authority may request the Council to approve intervention into the affairs of the institution by appointing additional members to board of the institution and the insistence that the social housing institution comply with the instruction notified to it.

(5) Should the social housing institution continue to resist the intervention of the Regulatory Authority or improvements in its performance are not delivered, the Regulatory Authority may request the Council to authorise a forensic investigation into the institution's affairs by a public accountant and auditor as contemplated under the Public Accountant's and Auditor's Act, 1991 (Act No. 80 of 1991) and may appoint such person to undertake such investigation.

(6) The Regulatory Authority, after consultation with the providers of any debt finance to the institution and upon notice to affected parties, including the providers of finance to the institution, may apply to the High Court for the suspension of the chairperson, members of the board, manager or executive or senior staff of the institution for the period of the investigation and appoint suitably qualified people to manage the institution's affairs in their place pending the findings of the forensic audit report..

(7) The forensic audit report must make a finding on whether the social housing institution has been managed in a manner which constitutes maladministration.

(8) If the forensic audit report does not make a finding of maladministration, the suspended persons are automatically re-instated as from the date of such report and the Regulatory Authority must review its previous instructions to the institution.

(9) If the forensic audit finds maladministration, the Regulatory Authority must request the members of the social housing institution to replace any suspended person or person associated with the maladministration with a person acceptable to or recommended by the Regulatory Authority.

(10) If the Council, based on the forensic audit report, does not believe that the institution is sustainable in its current form, or if the social housing institution refuses to take the steps required under subsection (9), the Regulatory Authority, after consultation with the

providers of debt finance to the institution and upon notice to affected parties, including the providers of finance to the institution, may apply to the High Court for an order placing the institution under the administration of the Regulatory Authority.

(11) If the Court grants an order placing the institution under the administration of the Regulatory Authority, the Regulatory Authority –

- (a) must manage the institution towards viability of the whole or part of the institution's operations, to the extent possible;
- (b) may remove the accreditation of the social housing institution;
- (c) may transfer the housing stock or rights of the social housing institution to another social housing institution prepared to accept such transfer on such terms and conditions as may be agreed at the time; or
- (d) where appropriate, institute legal proceedings for the winding up of the institution.

(12) Where the Regulatory Authority succeeds in restoring the viability of the institution or any part thereof, it may apply to Court for –

- (a) the administration order to be lifted; and
- (b) the appointment of suitable persons as directors and office bearers of the institution.

(13) A social housing institution or any person directly affected by a decision of the Council, may exercise –

- (a) any rights to internal review to the Council in accordance with the prescribed procedures;
- (b) any other rights according to law.

(14) A social housing institution for purposes of any inspection under this Act must, subject to the provisions of any applicable law, allow the Regulatory Authority –

- (a) access to its premises or any property developed, constructed or managed by it;
- (b) access to its records and documentation; and
- (c) the seizure and photocopying of such records and documentation as may be required for investigation,

subject to such limitations as may be prescribed by the Minister.

(15) This section, in accordance with the provisions of section 6(2), does not apply to other delivery agents.



## CHAPTER 4

## SOCIAL HOUSING INSTITUTIONS

**13. Statutory recognition of social housing institutions**

(1) As from the commencement of this Act, all institutions having undertaken housing development with the benefit of the institutional subsidy, are provisionally accredited social housing institutions for purposes of this Act and subject to the provisions of this Act and the powers of the Regulatory Authority.

(2) Provisional accreditation pursuant to subsection (1) lapses on the date prescribed by the Minister.

(3) An institution wishing to carry on the business of social housing must in the prescribed format apply to the Regulatory Authority for accreditation and registration. A municipality wishing to participate in social housing may establish an institution, and that institution may apply to the Regulatory Authority for accreditation and registration.

(4) A social housing institution, subject to any limitations prescribed by the Minister, must be a company registered under the Companies Act, 1973, or a co-operative registered under the Co-operatives Act, 2005 (Act No. 14 of 2005) or any other form of institution acceptable to the Regulatory Authority.

(5) Should a social housing institution comply with all the qualifying criteria, it shall be accredited as a social housing institution in terms of this Act and its details must be entered in a register kept for this purpose by the Regulatory Authority.

(6) Should a social housing institution at any stage fail to comply with the qualifying criteria-

- (a) the Regulatory Authority may exercise the powers referred to in section 12; and
- (b) the Regulatory Authority may, in its discretion and as determined in the regulations-
  - (i) recover any monies granted to the social housing institution in terms of the social housing programme;

- (ii) withhold any further grants;
- (iii) stipulate conditions relating to reforms to be undertaken by the social housing institution or improvements to be effected by it for the payment of any grants; and
- (iv) where necessary, intervene in accordance with the provisions of section 12.

(7) A social housing institution must comply with all the provisions of the Act in terms whereof it was established and any other applicable law, and any contravention of the said provisions may result in its accreditation being withdrawn by the Regulatory Authority.

(8) The lapsing of the provisional accreditation, or the withdrawal of accreditation in terms of this Act, does not preclude the Regulatory Authority from exercising any of its powers under this Act.

#### **14. Functions and duties of social housing institutions**

(1) Social housing institutions must –

- (a) initiate application for accreditation in accordance with and comply on an ongoing basis with the qualifying criteria;
- (b) acquire, develop, manage, or both develop and manage, approved projects primarily for low income residents with the joint support of local authorities;
- (c) promote the creation of quality living environments for low income residents;
- (d) reinvest operational surpluses generated as a result of funding provided in terms of the social housing programme, in further approved projects;
- (e) consult with municipalities with a view to developing social housing stock;
- (f) enter into and comply with annual performance agreements with municipalities on approved projects in its area of jurisdiction;
- (g) inform residents on consumer rights and obligations in social housing;
- (h) observe and operate within government policy on social housing;
- (i) seek permission for the sale of any properties in their ownership from the Regulatory Authority on the basis that such sale does not endanger the security of tenure of existing residents meeting the conditions of their tenancy and that the

grant component of the proceeds receipts from such sale must be used to provide social housing;

- (k) seek permission from the Regulatory Authority for any merger or separation of social housing institutions;
- (l) seek permission from the Regulatory Authority for any changes to lease agreements or other prescribed documentation; and
- (m) seek permission from the Regulatory Authority for any prescribed matter.

(2) Social housing institutions must at all times function in compliance with -

- (a) the provisions of this Act;
- (b) the provisions of the social housing programme and guidelines of Government;
- (c) the Ministerial National Norms and Standards in respect of Permanent Residential Structures;
- (d) the national building regulations under the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);
- (e) the technical standards imposed by the National Home Builders Registration Council established under the Housing Consumer Protection Measures Act, 1998 (Act No. 95 of 1998);
- (f) any agreement entered into between the Regulatory Authority and the social housing institution;
- (g) the provisions of the Rental Housing Act, 1999 (Act No. 50 of 1999); and
- (h) any other law,

where applicable.

(3)(a) A social housing institution must submit its draft lease agreement as well as any prescribed documents, and changes thereto from time to time, for the approval by Regulatory Authority.

(b) A social housing institution must ensure that the content of its lease agreement is communicated to residents and are strictly adhered to by residents.

## **15. Management of social housing institutions**

(1) Each accredited social housing institution must –

- (a) within 90 days of it having attained accreditation, prepare and submit to the Regulatory Authority for approval, a corporate governance policy which must address at least –
  - (i) risk management and risk strategy policies with regard to, amongst other things, development, operational, financial, property management, human resource, market, institutional and compliance risks;
  - (ii) internal control and audit models;
  - (iii) all the requirements of the regulations; and
  - (iv) any other aspect that may be prescribed;
- (b) appoint a competent manager who, through the assistance and support of competent personnel and systems –
  - (i) is responsible for the day to day management of the social housing institution and the housing stock developed through funding obtained in terms of the social housing programme;
  - (ii) is responsible for reporting to the Regulatory Authority in terms of this Act;
  - (iii) is the designated link between the Regulatory Authority and the social housing institution in respect of compliance with this Act or any regulations promulgated in terms of the Act; and
  - (iv) must ensure accreditation compliance;
- (c) submit to the Regulatory Authority a copy of its performance agreement with the municipality.

(2) The appointment referred to in subsection (1)(b) must be in writing and a copy of the letter of appointment sent to the Regulatory Authority within 21 days of such appointment.

(3) Any vacancy in the office of the Manager must, within three months of such vacancy occurring, be filled, or all reasonable steps taken to procure same, and a copy of the new appointment must be sent to the Regulatory Authority in terms of subsection (2).

(4) During the period of such vacancy the social housing institution must ensure that a competent person acts as manager.

## 16. Reporting by social housing institutions

- (1) A social housing institution must report to the Regulatory Authority –
- (a) at intervals and in details as prescribed in regulations contemplated in section 18 and
  - (b) annually, within six months of the financial year-end.
- (2) The documentation to be provided annual in terms of subsection (1) (b) must include the social housing institution's Annual Report and audited financial statements.
- (3) A social housing institution must make available to the Regulatory Authority any information reasonably requested of it in the carrying out of its regulatory and investment functions.
- (4) The Regulatory Authority must, subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), maintain the confidentiality of business sensitive information passed under regulatory confidence to it by a person.

## CHAPTER 5

### GENERAL PROVISIONS

#### 17. **Financing of social housing**

- (1) The Minister may allocate money out of the Department's budget for purposes of funding the social housing programme and for financing the implementation of the social housing programme and any relevant provincial housing programme which is consistent with national housing policy, in a province, in accordance with the social housing investment plan and the social housing regulatory plan.
- (2) The criteria for the allocation of money in terms of subsection (1) must be determined by the Minister after consultation with every MEC.
- (3) Any money allocated under subsection (1) must be paid over to the province in accordance with the provisions of the annual Division of Revenue Act.
- (4) The Director-General is –
- (a) for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the regulations made thereunder, the accounting officer in respect of the money in the Department's budget; and

(b) responsible for the administration thereof.

(5) That portion of the money in the Department's budget which has been earmarked for social housing development may be utilised only for the purposes set out in the Act, any regulations made in terms of the Act, and the annual Division of Revenue Act: Provided that, when any funds are transferred in terms of the annual Division of Revenue Act, the Director-General must ensure that the provisions of that Act are complied with.

## 18. Regulations

(1) The Minister –

(a) must make regulations prescribing –

- (i) any matter required to be prescribed by regulation under this Act;
- (ii) a code of conduct, the investment criteria, and the qualifying criteria for social housing institutions;

(b) may make regulations –

- (i) in respect of the required provisions of the agreements between the Regulatory Authority and other delivery agents;
- (ii) in respect of the required provisions of the agreements between the Regulatory Authority and provincial governments;
- (iii) in respect of the required provisions of the agreements between the Regulatory Authority and the National Housing Finance Corporation;
- (iv) in respect of any matter which is required to be prescribed by the Minister in terms of this Act, or
- (v) which the Minister considers necessary or expedient in order to achieve the objectives of this Act or the social housing programme,

(2) Any regulations contemplated in subsection (1) may create offences and provide for penalties in respect thereof.

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**19. Short title and commencement**

This Act is called the Social Housing Act, 2006 and takes effect on a date determined by the President by proclamation in the *Gazette*.

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