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General Notice

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GENERAL NOTICE

NOTICE 1853 OF 2006

DEPARTMENT OF HOUSING

RENTAL HOUSING AMENDMENT BILL, 2006

The Department of Housing hereby publishes the draft Rental Housing Amendment 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 **2 February 2007** to the Director-General, Department of Housing, for the attention of-

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RENTAL HOUSING AMENDMENT BILL, 2006

(MINISTER OF HOUSING)

[BILL-2006]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Rental Housing Act, 1999, so as to revise a definition; to make further provision for rulings by Rental Housing Tribunals; to expand the provisions pertaining to leases; to make further provision for the filling of vacancies in Rental Housing Tribunals; and to provide for matters connected therewith.

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

1. Amendment of section 1 of Act 50 of 1999

Section 1 of the Rental Housing Act, 1999 (hereinafter referred to as the principal Act) is hereby amended by the substitution for the definition of "unfair practice" of the following definition:

"unfair practice" means [a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord] –

- (a) any act or omission by a landlord or tenant in contravention of this Act; and
- (b) a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord."

2. Amendment of section 4 of Act 50 of 1999

Section 4 of the principal Act is hereby amended –

- (a) by the substitution for subsection (1) of the following subsection:

"(1) In advertising a dwelling for purposes of leasing it, or in negotiating a lease with a prospective tenant, or during the term of a lease, a landlord may not unfairly discriminate

against such prospective tenant or tenants, or the members of such tenant's household or the **[bona fide]** visitors of such tenant, on one or more grounds, including race, gender, sex, pregnancy, marital status, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language and birth."

(b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:

"(c) his or her possessions seized, except in terms of a law of general application and having first obtained a ruling by a Tribunal, made in accordance with the applicable provisions of any regulations made in terms of section 15(1) or an order of court; or".

(c) by the substitution for subsection (4) of the following subsection:

"(4) The rights set out in subsection (3) apply equally to members of the tenant's household and to **[bona fide]** visitors of the tenant."

(d) by the substitution in subsection (5)(d) for subparagraph (ii) of the following subparagraph:

"(ii) repossess rental housing property having first obtained a ruling by a Tribunal, made in accordance with the applicable provisions of any regulations made in terms of section 15(1) or an order of court made after considering all the relevant circumstances; and"

3. Amendment of section 5 of Act 50 of 1999

Section 5 of the principal Act is hereby amended-

(a) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) such receipt must be dated and clearly indicate the address, including the street number and further description, if necessary, of a dwelling in respect of which payment is made, and whether payment has been made for rental, arrears, deposit or otherwise, and specify the period for which payment is made: Provided that a Tribunal may, in exceptional cases, and on application by a landlord, exempt the landlord from providing certain information in terms of this paragraph:”

(b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:

“(c) the landlord may require a tenant, before moving into the dwelling, to pay a deposit which, at the time, may not exceed an amount equivalent to an amount specified in the agreement or otherwise agreed to between the parties and which is a once-off payment unaffected by subsequent rental increases.”

(c) by the substitution in subsection (3) for paragraph (d) of the following paragraph:

“(d) the deposit contemplated in paragraph (c) must be invested by the landlord in an interest-bearing account with a financial institution and the landlord must subject to paragraph (g) pay the tenant such interest at the rate applicable to such account which may not be less than the rate applicable to a savings account with **[a]** that financial institution, and the tenant may during the period of the lease request the landlord to provide him or her with written proof in respect of interest accrued on such deposit, and the landlord must provide such proof on request: Provided that where the landlord is a registered estate agent as provided for in the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), the deposit and any interest thereon shall be dealt with in accordance with the provisions of that Act;”

(d) by the insertion in subsection (3) after paragraph (o) of the following paragraph:

“(p) any costs-

- (i) associated with the inspections contemplated in paragraphs (e) and (f) shall be borne by the landlord and the tenant in equal shares;
- (ii) in relation to revenue stamps shall be paid by the landlord in accordance with the provisions of the Stamp Duties Act, 77 of 1968; and
- (iii) in relation to contract fees shall only be payable by the tenant upon proof of actual expenditure by the landlord."

4. Amendment of section 9 of Act 50 of 1999

Section 9 of the principal Act is hereby amended-

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

'(c) a deputy chairperson, who is suitably qualified and has the necessary expertise in rental housing matters, appointed by the MEC from the members referred to in paragraph (b) of this subsection."

- (b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

"(a) Any vacancy in the office of a member of the Tribunal must, within **[one month]** three months of such vacancy occurring, be filled by the MEC appointing another member under subsection (1) or (3)."

5. Amendment of section 13 of Act 50 of 1999

Section 13 of the principal Act is hereby amended-

- (a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) rule that any person must comply with a provision of this Act or the regulations relating to unfair practices;”

(b) by the substitution for subsection (13) of the following subsection:

“(13) A ruling by the Tribunal is deemed to be an order of a magistrate's court in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) and shall be enforced in terms of that Act.”

6. Amendment of section 15 of Act 50 of 1999

Section 15 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) in subsection (1) of the following words:

" The [MEC may] Minister must, after consultation with [the relevant standing or portfolio committee of the Provincial Legislature responsible for housing matters in the province] every MEC, by notice in the *Gazette*, make regulations relating to-".

7. Short Title

This Act is called the Rental Housing Amendment Act, 2006.

MEMORANDUM ON THE OBJECTS OF THE RENTAL HOUSING AMENDMENT Bill, 2006

1. BACKGROUND

The Rental Housing Amendment Bill, 2006, endeavors to address certain implementation problems which have been encountered since the promulgation of the Rental Housing Act, 50 of 1999 (the Act) on 1 August 2000.

2. OBJECTS OF THE BILL

- 2.1 The definition of an “unfair practice” is substituted to widen its ambit.
- 2.2 Section 4 of the Act is amended to expressly provide for Rental Housing Tribunal rulings regarding the seizure of possessions and the repossession of rental housing property.
- 2.3 Section 5 of the Act is amended to clarify aspects pertaining to the issuing of receipts by the landlord, the payment of deposits by tenants, and to insert a provision dealing with the costs associated with compliance with the provisions of section 5.
- 2.4 The provisions pertaining to the composition of Rental Housing Tribunals, as contained in section 9, are amended to –
 - 2.4.1 extend the period allowed for the filling of vacancies from the current 1 month to 3 months; and
 - 2.4.2 provide that the deputy chairperson of the Tribunal must be suitably qualified.
- 2.5 Section 13 of the Act is amended -

- 2.5.1 to allow Rental Housing Tribunals to make a ruling that a person must comply with the provisions of the Act; and
- 2.5.2 to provide that rulings by Rental Housing Tribunals must be enforced in terms of the Magistrates' Courts Act, 32 of 1944.
- 2.6 Section 15 of the Act is amended to empower the Minister to make regulations, whereas in the past this power vested in the MEC's. This amendment has been necessitated by the need to ensure uniformity throughout the country with regard to procedures followed by Rental Housing Tribunals as well as rulings made by it.

3. PERSONS CONSULTED

Written representations were requested and received from provinces and existing Rental Housing Tribunals. In addition certain aspects of the Bill had been discussed in depth with the Department of Justice, and the Bill is also to be published for public comment in the *Gazette*.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

The Bill is to be dealt with in terms of the procedure as provided for in section 76 of the Constitution.
