LEGAL NOTICE NO. 6

THE PUBLIC FINANCE MANAGEMENT ACT, 2012
(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 116 of the Public Finance Management Act, 2012, the County Executive Committee Member for Finance, Baringo County Government makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (BARINGO COUNTY ASSEMBLY STAFF MORTGAGE SCHEME FUND) REGULATIONS, 2016

Citation.

1. These Regulations may be cited as the Public Finance (Baringo County Assembly Staff Mortgage Scheme Fund) Regulations, 2016.

Interpretation.

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

   “Applicant” means a member of the scheme who is eligible to borrow from the fund;

   “Board” means the County Assembly Service Board established under section 12 of the County Governments Act, 2012;

   “Financial year” means the period of twelve months ending on the 30th June in each calendar year;

   “Borrower” means a person in receipt of a Mortgage loan out of the Fund;

   “Committee” means the Loans Management Committee established under these regulation;

   “Officer administering the Fund” means the administrator appointed under Regulation 7.

   “Government” means Baringo County Government.

   “Executive Committee Member” means the County Executive Committee Member responsible for Finance;

   “residential” means a house used for occupation by applicant and his or her immediate family.

   “Fund” means the Baringo County Assembly (Staff) Mortgage Scheme Fund established under these Regulations, as envisaged by Section 116 of the Public Finance Management Act, 2012;

Establishment of the Fund.

3. There is established a Fund to be known as Baringo County Assembly (Staff) Mortgage Scheme Fund as envisaged in section 116 of the Public Finance Management Act, 2012.
Object and purpose of the Fund.

4. The object and purpose of the Fund shall be to provide a mortgage scheme for the purchase, development, renovation or repair of residential property by members of the Scheme as prescribed by the Salaries and Remuneration Commission.

Initial Capital and other resources of the Fund.

5. (1) The initial capital of the Fund shall consist of the monies appropriated by Baringo County Assembly.

(2) Other resources of the Fund shall consist of—

(a) all sums of money received by or falling due to the Fund in respect of loans made there from and the interest on those loans;

(b) any amounts that may from time to time be allocated by County Government and appropriated by the County Assembly;

(c) all sums of money borrowed by the Committee with the approval of the County Executive subject to provisions of section 142 of Public Finance Management Act for the purpose of exercising any of its functions or discharging any of its obligations;

(d) all sums of money earned by or arising from investment made in respect of the Fund;

(e) all other sums of money that may in any manner become payable to or vested in the Fund including gifts, grants, wills and donations.

(3) The Fund shall be administered as a special account in the Baringo County Assembly Staff.

The Mortgages Management Committee.

6. (1) There is established a Committee to be known as the Mortgages Management Committee, which shall consist of—

(a) the Leader of the Majority Party and vice-Chairperson of the Board who shall be the Chairperson;

(b) the Leader of the Minority Party to the County Assembly;

(c) One person appointed to the County Assembly Service Board under section 12(3)(d) of the County Government Act, 2012;

(d) The Clerk to the County Assembly who shall be the Secretary and Administrator of the fund;

(e) The County Assembly Head of Finance (ex-officio member);

(f) The County Assembly Legal Counsel (ex-officio member);

(g) Head F Human Resource Management in the County Assembly.

(2) The meetings of the Committee shall be convened by the Chairperson or in the absence of the Chairperson, by a member designated by the chairperson
and shall be convened at such times as may be necessary for the discharge of the Committee’s functions.

(3) The quorum for a meeting of the Committee shall be the Chairperson and any three members.

(4) The Committee may organize itself into sub-committees for the purpose of effective administration of the Fund.

(5). All decisions of the Committee shall be made through minuted resolutions.

Administration of the Fund.

7. (1) The County Executive Committee member for finance shall designate a person responsible for administering the Fund in accordance with section 116 (2) of the PFM Act, 2012.

(2) The Committee shall administer the Fund and shall—

(a) process applications for mortgages in accordance with the existing terms and conditions of borrowing;

(b) liaise with the housing company(if any) to set up a revolving fund for the disbursement of the mortgages; and

(c) supervise the day to day running of the Fund.

(3) The Officer administering the Fund—

(a) shall supervise and control the administration of the Fund;

(b) may recommend conditions on the use of any moneys in the Fund and may impose any reasonable restriction or other requirement concerning such use;

(c) shall cause to be kept proper books of accounts and other books and records in relation to the Fund and for all mortgages financed from the Fund;

(d) shall prepare, sign and transmit to the Auditor General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund, prepared and signed by him specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the County Executive Committee member may from time to time direct in accordance with the Public Finance Management Act;

(e) shall cause the safe keeping of documents for all properties acquired under the Fund;

(f) shall furnish such additional information as he/she may deem to be proper and sufficient for the purpose of examination and audit by the Auditor-General.
8. The Committee may appoint a Mortgage Institution to administer the Fund on its behalf.

Operation of the Fund.

9. (1) A person eligible for a Mortgage under these Regulations who wishes to apply for a loan from the Fund shall present to the officer administering the Fund a duly completed purchase proposal in such form as the Committee may prescribe.

(2) The officer administering the fund shall satisfy himself/herself of the applicant's financial status and capacity to repay the Mortgage applied for and where so satisfied shall forward the application to the Committee for consideration.

(3) A Mortgage obtained under these Regulations shall be utilized for the purchase, development, renovation or repair of residential property for the occupation of the applicant and his or her immediate family.

(4) A Mortgage for the development of residential property may be granted at the discretion of the Committee—

(a) to a member of the Scheme who is in possession of a title deed, lease title or Allotment letters to the land on which the development is intended to be carried out; or

(b) in two instalments, for the purchase of the land at which the residential property is to be developed and for the subsequent development of the property.

(5) The amount of the first installment granted for the purchase of land under paragraph (b) shall not exceed forty per cent of the maximum Mortgage loan amount for which the member of the Scheme is eligible.

Application for a mortgage.

10. (1) An application for a loan under these Regulations shall be accompanied by the following documents where appropriate—

(a) copies of the designs of the proposed residential property duly approved by the County Government within whose area it is to be situated;

(b) bills of quantities in respect of the proposed development, renovation or repair;

(c) an official search of the title to the property intended to be purchased;

(d) a certified copy of the sale agreement relating to the property;

(e) a valuation report from a registered valuer.

(2) The applicant shall bear the cost of stamp duty and other legal fees.
Where a borrower fails to comply with the requirements of paragraph (2) within the stipulated time, the officer administering the Fund shall, upon giving the borrower fourteen days’ notice, deduct the amount due from the salary of that borrower in such instalments as may be appropriate and remit such deductions to meet such costs as may be due.

(4) All legal transactions in respect of the property being purchased shall be conducted by the County Assembly’s Legal Officer.

Disbursements of mortgages for development of property.

11. (1) A mortgage granted for the development of a residential property under these Regulations shall be released to the applicant in the following phases—

(a) the first disbursement based on the value of the land on which the residential property is proposed to be developed; and

(b) the subsequent disbursements based on the rate of completion of the various phases of development as certified by a qualified valuer / quantity surveyor at the cost of the applicant.

Leasehold property.

12. Where the property intended to be purchased through a loan from the Fund is leasehold property, such loan shall be granted where the expiry date of such lease is at least forty-five years beyond the final Mortgage loan repayment date.

Mortgage amounts.

13. (1) The amount of mortgage to a member of the Scheme shall not exceed the prescribed amounts by the Salaries and Remuneration Commission (the committee may consider availability of funds and needs of other applicants while determining the amount to a member)

(2) Notwithstanding the provisions of paragraph (1), no member of the scheme shall receive a Mortgage the repayment of which shall result in salary deductions exceeding two thirds of the monthly emoluments of the member of the scheme.

(3) Subject to these Regulations, a member of the scheme shall be eligible for the maximum amount of Mortgage specified under paragraph (1) or any other maximum as may be determined from time to time.

Repayment of Mortgage.

14. (1) the repayment of a mortgage granted under these Regulations shall be made through check-off system from the member’s monthly emoluments. Mortgage check-off forms shall be prescribed by the Committee

(2) Notwithstanding (1) above, a mortgagee may settle their mortgage by making standing order payments through banks or making lump sum settlement.
Interest rates.

15. (1) The Mortgage granted to a member of the scheme under these Regulations shall be three per centum (3%) per annum.

(2) A Mortgage Institution appointed under regulation 8 to administer the Fund may charge an interest of not more than four per centum to cover management costs.

(3) The interest charged under paragraphs (1) and (2) of this regulation shall be met by the borrower.

Repayment period.

16. (1) A Mortgage advanced under these Regulations shall be repaid in full over a maximum period of twenty (20) years.

(2) Where a state officer or Public officer leaves public service employment for whatever reason other than disciplinary grounds, the terms of the mortgage remain in force and does not change for the life of the Mortgage unless in cases of default in which shall be paid out of the fund and debited in such borrower’s account.

Mortgage insurance.

17. A borrower shall take out and maintain a Mortgage protection policy and a fire policy with an insurance firm approved by the Committee, the cost of which shall be paid out of the Fund and debited in such borrower’s account.

Property documents.

18. (1) The originals of all documents relating to property financed by a mortgage from the Fund shall be kept in safe custody by the officer administering the Fund.

(2) Documents referred to in sub section (1) shall include title deeds, authentic allotment letters and sale agreements.

Default in repayment of Mortgage.

19. The Committee may call in a loan and in default sell the charged property by public auction or private treaty where the borrower is in breach of the terms under the loan agreement or the covenant contained in the charge of the Mortgage instrument.

Responsibilities of Mortgage Institution.

20. The responsibilities of the Mortgage Institution, if any, appointed under these Regulations shall be—

(a) to operate individual accounts for each borrower, which shall provide details of recoveries of the loan;

(b) to charge security on properties acquired through mortgages from the Fund to protect the interests of the Fund and act as custodian of such charges;
(c) to disburse cheques for newly approved Mortgages to various vendors, after the necessary documentation is completed by the Committee;

(d) upon repayment of the Mortgage, interest and other expenses which may be outstanding, to discharge the charge and release the security documents to the borrower; and

(e) upon default, to call in the loan and on behalf of the Committee sell the charged property by public auction or private treaty, in which event the Fund shall meet any shortfall between the Mortgage outstanding and the proceeds of sale.

Mortgage discharge.

21. Upon full repayment of the mortgage, a signed Mortgage discharge certificate in such form as may be prescribed by the Committee shall be issued to the member of the scheme and a copy thereof shall be forwarded to the Mortgage Institution.

Mortgage processing procedures.

22. The Committee shall prescribe the procedures and the criteria for Mortgage processing and award subject to the provisions of these Regulations.

Proper Books of Accounts.

23. (1) The officer administering the fund shall be responsible for maintenance of proper books of accounts and the preparation of annual financial statements which shall include but not limited to the following:-

(a) income and expenditure account;

(b) statement of financial position;

(c) statement of cash flows.

(2) The officer administering the Fund shall ensure that the accounts for the Fund and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting standards Board from time to time.

(3). The officer administering the Fund shall cause to be prepared quarterly returns to be submitted to the County executive Committee and the Committee on or before the tenth day after the end of the quarter.

Audit of Books of Accounts and Financial Statements.

24. The annual financial statements of the fund shall be subject to audit by the Auditor General in accordance with the provisions of Articles 226 and 229 of the Constitution of Kenya and the Public Audit Act.
Supplementary terms.

25. (1) These Regulations shall be supplemented by such terms as may, from time to time, be detailed in the application form supplied by the Committee and in the contract between the Mortgage Institution and the Committee.

(2) Subject to these Regulations, the Committee shall issue guidelines on—

(a) the purchase and development of land and residential properties under these Regulations;

(b) the utilization of surplus Funds for the purchase and development of land and residential property under these Regulations; and

(c) such other matters as may be necessary for the proper management and administration of the Fund.

Power to Amend Regulations.

26. (1) the County executive Committee member may, with the approval of the County Assembly, amend the Regulations generally for the proper car scheme loans out of the purposes and provisions of these Regulations and in particular, may make provisions—

(a) providing for the administration, management and investment of the resources of the fund;

(b) requiring a member of the scheme to whom a mortgage is granted under these Regulations to furnish such information as may from time to time be required by the Committee;

(c) Prescribing the basis on which a mortgage may be obtained;

(d) Prescribing the procedure to be followed prior to the obtaining of a car loan and for payment of the amount due on a mortgage together with any interest thereon;

(e) Prescribing anything which may be or is required to be prescribed under this regulation.

Made on the 26th February, 2016

GEOFFREY BARTENGE,
County Executive Committee Member for Treasury and Economic Planning.