LEGAL NOTICE No 3

THE PUBLIC FINANCE MANAGEMENT ACT
(No 18 of 2012)

THE KAKAMEGA COUNTY FINANCE ACT, 2016

THE KAKAMEGA (COUNTY ASSEMBLY STAFF MORTGAGE AND CAR
LOAN SCHEME FUND) REGULATIONS, 2016

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SCHEDULE
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 Kakamega County Executive Committee Member for Finance makes the following Regulations—

THE KAKAMEGA (COUNTY ASSEMBLY STAFF MORTGAGE AND CAR LOAN SCHEME FUND) REGULATIONS, 2016

PART I—PRELIMINARY

1 These Regulations may be cited as the Kakamega (County Assembly Staff Mortgage and Car Loan Scheme Fund) Regulations, 2016

2 In these Regulations, unless the context otherwise requires—

“Assembly” means the Kakamega County Assembly,

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

“Commission” means the Salaries and Remuneration Commission,

“Committee” means the Administration Committee of the fund established under regulation 7,

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

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

“Fund” means the Kakamega County Assembly Staff Mortgage and Car Loan Scheme Fund established under regulation 3,

“Fund Manager” means a financial institution, mortgage finance company or tenant purchase institution,

“KSh ” means the Kenya Shilling,

“Member of the scheme” means staff of the Kakamega County Assembly who is permanently employed and is pensionable,

“Mortgage Finance Company” has the meaning assigned to it under Section 2 of the Banking Act,

“Tenant purchase institution” means a company incorporated in Kenya which has not less than twenty years experience in operation of tenant purchase for under two thousand housing units at one moment,

“Valuer” means a person registered as a valuer under the Valuers Act
PART II—ESTABLISHMENT OF THE FUND

3 There is established a Fund to be known as the Kakamega County Assembly Staff Mortgage and Car Loan Scheme Fund

4 The object and purpose of the Fund shall be to provide a loans scheme for the purchase, construction or development of a residential property and for the purchase of private cars by members of the Scheme

5 (1) The initial capital of the Fund shall consist of the sum of KSh 100,000,000 appropriated by the Assembly and such other funds as may be voted for or allocated for the purposes of the fund in subsequent financial years

   (2) The fund shall be a revolving fund

   (3) All monies that shall be paid into the fund account shall be managed by the Fund manager

   (4) The interest accruing into the Fund account shall be retained for the benefit of the Fund

6 The signatories to the Fund account shall be the Chairperson and any other two members of the Committee to be agreed upon by the Committee

PART III—THE ADMINISTRATION AND MANAGEMENT OF THE FUND

7 There is established an Administration Committee of the Fund within the Assembly consisting of—

   (a) The Clerk of the Assembly who shall be the chairperson,

   (b) The Deputy Clerk,

   (c) The Head of Human Resource Management department, who shall be the Secretary,

   (d) The Head of Finance department,

   (e) The Head of Legal department,

   (f) The Head of Budget Office,

   (g) The Head of Accounting Office,

   (h) The Head of Audit department,

   (i) The Head of procurement department

8 (1) The committee shall carry out its functions independently

   (2) The functions of the committee shall be to—

   (a) be the administrator of the fund,
(b) formulate and develop applications for granting of loans,
(c) receive and review applications for grant of loans,
(d) approve successful applicants for grant of loans,
(e) designate a fund manager to act as a financial agent of the scheme and the fund manager so designate to be subject to the terms and conditions of agreement as may be determined by the committee from time to time,
(f) co-opt persons with relevant expertise to the Committee where necessary,
(g) keep and maintain records of all loan applications and arising activities,
(h) ensure that every borrower’s monthly salary reflects a deduction of the loan granted plus interest as shall be evidenced by the pay slip,
(i) forward to the fund manager names of successful applicants for grant of loans and request the fund manager to disburse cheques or transfer funds to them or their financial institutions,
(j) ensure that the scheme’s revolving fund is at all times viable and protected from all kinds of interference,
(k) organise trainings of its members from time to time on how to effectively carry out its functions,
(l) perform such other duty as required by law and as may be necessary for the proper administration of the fund

(2) The administration costs of the Committee shall be appropriated by the Budget Committee of the Assembly

9 (1) The Committee shall meet at least four times in a financial year

(2) The quorum of a meeting of the Committee shall be the chair present and four other members

(3) The chairperson shall convene and preside at all meetings of the Committee and in the absence of the chairperson the Deputy Clerk

(4) In the absence of both the chairperson and the Deputy Clerk, the Committee Members shall elect a Chairperson among themselves

(5) The decision of the Committee shall be by a simple majority and in case of a tie the chairperson shall have a casting vote

(6) The Committee may be paid such allowances as shall be
The Committee shall have all the powers necessary for the proper and independent performance of its functions under these regulations, and without prejudice to the generality of the foregoing, the Committee shall have powers to—

(a) appoint or designate fund manager to manage the Fund on its behalf,

(b) reject and return loan applications that do not meet requirements under these regulations,

(c) receive, scrutinize and review reports from the Fund manager and make recommendations where necessary,

(d) to do any other thing as the Committee may consider appropriate in furtherance of the objects and purposes of the Fund

11 (1) A loan granted under these regulations shall be utilized for the purchase, construction or development of a residential property of the member of the scheme or for improvement of the residential house or for the purchase of a private motor vehicle for the use of the member

(2) The loan referred to in sub regulation (1) shall be granted to a member of the Scheme who is in possession of—

(a) Title deed to the land on which the construction or development is intended to be carried out, or

(b) a certificate of lease,

(c) A sale agreement duly executed by an advocate

(3) In case a member of the scheme does not qualify under sub regulation (2) then the member shall be entitled to a first installment of forty percent of the maximum loan amount of which the member is eligible for the purchase of the land on which the residential house is to be developed or constructed and a subsequent installment for the construction or development of the residential house after the member has complied with sub regulation (2)

(4) The land purchased under sub regulation (3) shall be charged in favor of the Fund until when the entire loan is repaid by the borrower

(5) The first installment in sub regulation (3) shall be paid directly to the owner of the land to be purchased after the member has surrendered to the Committee a sale agreement duly executed by an Advocate together with all the transfer documents of the land duly signed

12 (1) A person wishing to apply for a loan under the fund shall be an employee of the assembly who is permanently employed and is pensionable
(2) A member who wishes to apply for a loan from the Fund shall make such application to the chairperson of the Committee in such manner as the Committee shall prescribe from time to time.

13 (1) An application for a loan for construction or development purposes shall be accompanied by the following documents—

(a) designs of the proposed residential house duly approved by relevant authority or authorities,
(b) bills of quantity in respect of the proposed residential house,
(c) a current official search of the land on which the residential house is intended to be constructed or developed,
(d) a copy of the sale agreement relating to the property duly executed by an Advocate,
(e) national environment management authority approval(s) where applicable,
(f) any other document that the committee may require for the purpose of determining the application.

(2) An application for a car loan shall be accompanied by a sale agreement duly executed by an advocate or an offer letter from the seller or dealer and a copy of the borrower’s driving license.

(3) The borrower shall bear the costs of stamp duty, transfer fees, legal fees and other related charges arising from the grant of loan.

(4) The Committee may, where it deems appropriate, recommend the appointment of an advocate to act on its behalf in respect of transactions relating to the fund.

14 Where the property intended to be purchased through a loan from the fund is leasehold property, such loan shall be granted where expiry date of such lease is at least twenty one years from the date the loan is granted.

15 (1) The maximum loan to be granted under these regulations to a member of the scheme shall be as prescribed by the Commission from time to time.

(2) An applicant or borrower shall be at liberty to enter into an arrangement with the Committee or Fund manager for the loan granted to be used to buy off his or her loan(s) from other financial institutions or for other financial institutions to buy off the loan granted under the scheme.
16 (1) A loan granted under these regulations shall be fully repaid at the end of twenty years for a mortgage and five years for a motor vehicle from the time of grant of the loan or as shall be prescribed by the Commission from time to time.

(2) The loan granted under these regulations shall attract an interest of three per centum (3%) per annum or such other rate as may be advised by the Commission from time to time.

17 (1) The Fund shall register a charge on any property financed through a loan under these regulations and such charge shall impose an obligation on the borrower.

(2) A motor vehicle purchased under the Fund shall be jointly registered in the names of the fund and the borrower.

(3) A log book of a motor vehicle purchased under the fund shall be retained by the fund manager or the committee until all outstanding loan is repaid in full.

(4) The borrower shall—

(a) not mortgage, charge, surrender the lease or sell or agree to sell or part with possession of the charged property or any part thereof in case of land, or sell, agree to sell, lease or part with possession of a motor vehicle purchased under this Fund without the prior written consent of the committee and until the loan is repaid in full,

(b) meet and pay all rates, rents, insurances and any other outgoings in respect of the property and send the proof of such payments to the Committee.

(4) During the loan repayment period, every borrower shall, in case of land—

(a) maintain the property in a satisfactory state of repair,

(b) not alter or make any structural alteration to the property without the written consent of the Committee, and

(c) carry out any valuation, assessment or investigation relating to the property or title thereto, as the case may be, without the written approval of the Committee.

18 (1) A borrower shall take out and maintain a mortgage protection policy and a fire policy with a reputable insurance firm, the cost of which shall be paid out of the Fund and debited in the borrower’s account.

(2) The originals of all documents relating to property...
financed by a loan from the Fund shall be kept in safe custody by
the Committee or the fund manager until the loan is repaid in
full.

19 (1) Where a borrower defaults in repayment of the loan
for a period of three consecutive months the Committee shall
issue a one month notice to the borrower to repay and thereafter
if the borrower fails to repay the loan repossess and sell the
property or take any other appropriate action against the
defaulter for the purposes of recovering the principal amount
plus interest accrued.

(2) Where a borrower ceases to be a member of the scheme
before the loan is repaid in full, the Committee may, in its
discretion, allow the borrower to continue to repay the loan on
the same terms as set out in these regulations provided that when
the borrower defaults in payment for a period of two consecutive
months the outstanding loan shall revert at the prevailing
commercial interest rate.

(3) Where a borrower leaves service on disciplinary
grounds or resigns before serving for the full term of
employment, the committee may grant the borrower a maximum
period of two months to repay the full outstanding loan or permit
the borrower to repay the outstanding loan at the prevailing
market rate.

(4) Where the commercial rate is applicable and the
borrower is in default for a period of two months, the committee
shall call in the loan and sell the charged property by public
auction or private treaty or take any other appropriate action in
order to recover the principal amount plus interest.

20 The committee shall take all lawful actions necessary to
protect Government interest in the property in respect of which a
loan is granted.

21 (1) The Committee shall—
(a) open a bank account for the Fund,
(b) supervise and control the administration of the Fund,
(c) cause to be kept books of accounts and other books and
records in relation to the Fund and for all loans financed
from the Fund,
(d) prepare, sign and transmit to the Auditor-General in
respect of each financial year and within three (3)
months after the end thereof, a signed statement of
accounts relating to the Fund, specifying the income of
the Fund and showing the expenditure incurred from the
Fund, in accordance with the Public Finance
Management Act 2012, and

(e) furnish such additional information as may be required for the purpose of examination and audit by the Auditor-General

(2) Every statement of account prepared under this regulation shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned

22 Where the Committee approves the appointment of a fund manager to manage the Fund, the fund manager shall—

(a) operate individual accounts for each borrower and provide details after every three months of recoveries of the loan,

(b) charge security on properties acquired through loans from the Fund to protect the interests of the Fund and act as custodian of such charges,

(c) disburse cheques or transfer funds for newly approved loans to borrowers after the necessary documentation is completed by the Committee,

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

(e) pay all outgoings and issue demand notices to defaulting borrowers through the committee administering the fund,

(f) verify all the documents under regulation 11 and 13,

(g) provide to the committee a report for the financial status of the revolving fund each financial year and within three months after the end of each financial year,

(h) in conjunction with the committee determine the monthly repayment of every borrower for the loan granted,

(i) keep and maintain records of all borrowers,

(j) keep in safe custody all securities of the borrowers as availed by the committee until when the loan has been repaid in full,

(k) perform such other duties as may be assigned to it from time to time by the Committee

23 No person shall except as directed by the committee sell or in any way transfer any property acquired through the
Fund under these regulations unless the final repayment of the full loan advanced by the fund together with such interest and incidentals as may be due is made or disclosed.

24 The Fund manager shall charge an interest of not more than one per centum per annum on the reducing balance of the loan granted to cover its management costs.

PART IV—MISCELLANEOUS

25 These regulations shall be supplemented by such requirements as may be detailed in the loan application form supplied by the Committee or the fund manager and by the contract between the Committee and the borrower or the fund manager and the borrower.

26 The committee may from time to time recommend to the Executive Committee Member any amendment to these regulations.

27 The Executive Committee Member may wind up the fund with the approval of the County Assembly, and upon winding up—

(a) The Executive Committee Member shall ensure payment of any amount remaining in the Fund into the County Assembly account,

(b) The Committee shall with the approval of the Board pay any deficit in the Fund from the County Assembly account,

(c) All assets of the Fund will be absorbed into the County Assembly.
SCHEDULE I

<table>
<thead>
<tr>
<th>Beneficiaries</th>
<th>Car Loan</th>
<th>Mortgage</th>
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</thead>
<tbody>
<tr>
<td>Executive Officer of a government organ</td>
<td>Up to KSh 5 Million</td>
<td>Up to Kshs 25 Million</td>
</tr>
<tr>
<td>Service grades S,T,U and equivalent grades in the Public Service</td>
<td>Up to KSh 4 Million</td>
<td>Up to Kshs 20 Million</td>
</tr>
<tr>
<td>Service grades P,Q,R and equivalent grades in the Public Service</td>
<td>Up to KSh 3 Million</td>
<td>Up to Kshs 15 Million</td>
</tr>
<tr>
<td>Service grades K,L,M,N and equivalent grades in the Public Service</td>
<td>Up to Ksh 15 Million</td>
<td>Up to Kshs 10 Million</td>
</tr>
<tr>
<td>Service grades G,H,J and equivalent grades in the Public Service</td>
<td>Up to KSh 800,000</td>
<td>Up to Kshs 6 Million</td>
</tr>
<tr>
<td>Service grades A,B,C,D,E,F and equivalent grades in the Public Service</td>
<td>Up to KSh 600,000</td>
<td>Up to Kshs 4 Million</td>
</tr>
</tbody>
</table>

Made on the 22nd September, 2016

GEOFFREY OMULAYI,
County Executive Committee Member for Finance