LEGAL NOTICE NO. 3

THE MACHAKOS COUNTY ASSEMBLY (HOUSING SCHEME FUND) REGULATIONS, 2014
(No. 18 of 2012)

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

THE MACHAKOS COUNTY ASSEMBLY (HOUSING SCHEME FUND) REGULATIONS, 2014

PART I—PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Machakos County Assembly (Housing Scheme Fund) Regulations, 2014.

2. In these Regulations, unless the context otherwise requires—
   “borrower” means a person in receipt of a loan out of the Fund;
   “Board” means the Machakos County Assembly Service Board established under section 12 of the County Government Act;
   “Committee” means the Loans Management Committee established under regulation 6;
   “County Assembly” means the Machakos County Assembly;
   “financial year” means the period of twelve months ending on the 30th June in each year;
   “Fund” means the Machakos County Assembly (Housing Scheme Fund) established under regulation 3;
   “member of the Scheme” means a member of the Machakos County Assembly or an officer of the Assembly;
   “Machakos” means the County of Machakos;
   “officer administering the Fund” means the Clerk of the Machakos County Assembly;
   “property” means a residential house purchased through a loan from the Fund and includes the land purchased under a loan from the Fund on which such house is to be developed; and
   “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 Machakos County Assembly (Housing Scheme Fund).
4. The object and purpose of the Fund is to—
   (a) provide loans for the purchase, development, renovation or repair of residential houses to members of the Scheme;
   (b) raise funds for the implementation of the objectives stated in paragraph (a).

5. (1) The capital of the Fund shall consist of—
   (a) the initial capital of one hundred and eighty million shillings paid out of the vote of the County Assembly Service Board for the 2014/2015 financial year and such other funds as may be voted and appropriated in subsequent financial years; and
   (b) all monies that shall be paid into the Fund.

   (2) The County Assembly may appropriate additional monies to the Fund.

   (3) The Fund shall be administered as a special Fund in the County Assembly Fund and shall be operated by the officer administering the Fund.

   (4) The interest accruing to the Fund shall, where such interest constitutes a surplus after meeting the requirements of regulation 18 (1) (b) be credited to the capital of the Fund.

PART III—THE LOANS MANAGEMENT COMMITTEE

6. (1) There is established a committee to be known as the Loans Management Committee, which shall consist of—
   (a) the Leader of the Majority Party of the County Assembly who shall chair the Committee;
   (b) the leader of the Minority Party of the County Assembly;
   (c) the Majority Party Whip of the County Assembly;
   (d) the Minority Party Whip of the County Assembly;
   (e) the Chairperson of the Budget and Appropriation Committee;
   (f) the member of the County Assembly Service Board appointed pursuant to section 12 (3) (d) of the County Government Act;
   (g) two members of the County Assembly, being one a man and one a woman appointed by the County Assembly; and
   (h) the Clerk of the County Assembly who shall be the secretary to the Committee.

   (2) The Fund shall be administered by the Clerk to the County Assembly who shall be an ex-officio member of the Committee.

   (3) The Committee shall oversee the administration of the Fund and shall—
(a) process applications for loans 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 loans; and

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

(4) The meetings of the Committee shall be convened by the chairman 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.

(5) The quorum for a meeting of the Committee shall be the chairperson and any four members.

7. Notwithstanding regulation 6(3), the Board may, if it considers it appropriate to do so, appoint a mortgage institution to administer the Fund on its behalf.

8. (1) A member of the Scheme who wishes to apply for a loan from the Fund shall make an application to the officer administering the Fund in such manner as the Loans Management Committee may prescribe.

(2) A loan obtained under these Regulations shall be utilized for the purchase, development, renovation or repair of residential house for the occupation of the applicant.

(3) A loan for the development of a residential house shall be granted at the discretion of the Committee—

(a) to a member of the Scheme who is in possession of a title document to the land on which the development is intended to be carried out; or

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

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

9. (1) A loan 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 at the cost of the applicant.

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 relevant authority of the County Government within the 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.

(2) The applicant shall bear the cost of stamp duty and other legal fees.

(3) 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 the deductions to meet the costs as may be due.

(4) All legal transactions in respect of the property being purchased shall be conducted by an advocate appointed by the Board.

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

12. (1) The maximum loan to be granted under these Regulations to a member of the Scheme shall be a sum equivalent to the member's net emoluments at the time of application multiplied by the number of months remaining for the life of that County Assembly but shall not exceed the sum of three million shillings.

(2) A member of the Scheme shall be required to give prior authority in writing for pension dues and or gratuity to be utilized to clear any outstanding debt in case the member losses their seat before fully repaying the loan.

(3) Subject to this regulation, a member of the Scheme shall be eligible for the maximum amount of loan specified under paragraph (1) in each term of the member which may be accessed by the member in a maximum of two disbursements in each term.

(4) Despite the provisions of sub-paragraph (1) the Management Committee may impose such other maximum loan disbursement amounts as it may deem fit.

(5) Subject to the provisions of this paragraph the Management Committee may from time to time review the maximum loan disbursement in compliance with national policies and guidelines.

(6) For an officer of the County Assembly to qualify for a loan, such officer shall be required to be—

(a) confirmed in appointment; or
(b) appointed on contract with the Board with the relevant documentation duly completed.
13. A loan granted under these Regulations shall be fully repaid—

(a) at the end of the term of the county assembly member;

or

(b) within a period of fifteen years or the remaining period of service of the officer of the assembly whichever is less.

14. (1) The interest chargeable on a loan shall be three per centum per annum on a monthly reducing balance and this rate may be reviewed from time to time at the discretion of the Board.

(2) A mortgage institution appointed under regulation 7 to administer the Fund may charge an interest of not more than four per centum above the interest chargeable under paragraph (1) of this regulation, to cover management costs.

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

15. (1) The Fund shall register a charge on any property financed through a loan granted under these Regulations and such charge shall impose an obligation on the chargee—

(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 without the prior written consent of the Board;

(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 Board; and

(c) provide a transfer deed duly signed by the borrower and a letter authorizing the Board to sell the property in case of default in payment.

(2) All residential properties purchased through the Fund shall be constructed of such material as may be acceptable to the Board.

(3) During the loan repayment period, every borrower shall—

(a) ensure that the property is used for residential purposes only;

(b) maintain the property in a satisfactory state of repair; and

(c) not alter or make any structural alteration to the property, or carry out any valuation, assessment or investigation relating to the property or title thereto, as the case may be, without the approval of the Board.

(4) No borrower shall be eligible for more than one loan at a time or more than a total of two loans from the Fund.

(5) All legal documentation and disbursement of funds shall be supervised by the officer administering the Fund.

16. (1) A borrower shall take out and maintain a mortgage protection policy and a fire policy with an insurance firm approved by the Board, 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 officer administering the Fund.

17. The Board 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.

18. (1) The officer administering the Fund shall—
   (a) supervise and control the administration of the Fund;
   (b) utilize the interest accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirements concerning such use;
   (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 statement of accounts relating to the Fund, specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Board may from time to time direct in accordance with the Public Finance Management Act;
   (e) furnish such additional information as may be required for the purpose of examination and audit by the Auditor-General; and
   (f) designate and appoint such staff as may be necessary to assist in the administration of the Fund and may require such staff to carry out such inspections as may be necessary to verify any information submitted under these Regulations.

(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.

19. 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 loans from the Fund to protect the interests of the Fund and act as custodian of such charges;
   (c) to disburse cheques for newly approved loans to various vendors, after the necessary documentation is completed by the Committee;
   (d) to pay all outgoings and issue demand notices where necessary to members through the officer administering the Fund;
(e) upon repayment of the loan, interest and other expenses which may be outstanding, to discharge the charge and release the security documents to the borrower; and

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

20. (1) These Regulations shall be supplemented by such terms as may, from time to time, be detailed in the application form supplied by the Board and in the contract between the mortgage institution and the Board.

(2) Subject to these Regulations, the Board 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.

Dated the 15th August, 2014.

ELIZABETH MUTHEU NZIOKA.
Machakos County Executive Committee Member for Finance.