LEGAL NOTICE NO. 3

PUBLIC FINANCE MANAGEMENT ACT
(No. 18 of 2012)

THE THARAKA NITHI COUNTY ASSEMBLY HOUSING FUND COMMITTEE REGULATIONS, 2018

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THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

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

THE PUBLIC FINANCE MANAGEMENT THE THARAKA NITHI COUNTY ASSEMBLY HOUSING FUND COMMITTEE REGULATIONS, 2018

PART I—PRELIMINARY

Citation

1. These Regulations may be cited as the Tharaka Nithi County Assembly Housing Fund Regulations, 2018.

Interpretation

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 Tharaka Nithi County Assembly Service Board established under section 12 of the County Government Act;

“committee” means the Loans Management Committee established under regulation 6;

“administrator” means a person designated by the County Executive Committee member for Finance to administer the Fund;

“fund” means the Tharaka Nithi County Assembly Housing Fund established under regulation 3;

“member of Staff” means an employee of the Tharaka Nithi County Assembly Service Board;

“government” means the County Government of Tharaka Nithi;

“officer administering the Fund” means the Assembly Clerk of Tharaka Nithi 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 (Cap 532).
Establishment of the Fund

3. There is established a Fund to be known as the Tharaka Nithi County Assembly Housing Fund.

Object and Purpose of the Fund

4. The object of the Fund is to—

(a) provide loans for the purchase, development, renovation or repair of residential houses to Members of the County Assembly and Members of Staff;

(b) raise funds for the implementation of the objectives stated in paragraph (a).

Capital of the Fund.

5. (1) The capital of the Fund shall consist of—

(a) monies appropriated by the Government;

(b) all monies that shall be paid into the Fund;

(c) income generated from the proceeds of the Fund; and

(d) grants and donations.

(2) 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 HOUSING LOANS MANAGEMENT COMMITTEE

Establishment of the Housing Loans Management Committee

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

(a) the County Assembly Speaker who shall be the Chairperson;

(b) the Assembly Clerk who shall be the fund administrator;

(c) the Majority Leader;

(d) the Minority Leader;

(e) the Majority Whip;

(f) the Minority Whip;

(g) the Head Finance department;

(h) the Head Human Resource Department; and

(i) the Head Legal Department.
(2) The Assembly Clerk shall be the officer administering the Fund.

(3) The Committee 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 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.

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

Board may appoint mortgage institution

7. The Board may, if it considers it appropriate to do so, appoint a mortgage institution to lend the funds to the staff on its behalf.

Application for a loan

8. (1) A Member of County Assembly or a Member of Staff 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 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 and his or her immediate family:

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

(a) to a Member of County Assembly or a Member of Staff 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 County Assembly or a Member of Staff for the purchase of the land at which the residential property is to be developed and for the subsequent development of the property.

Disbursement of loans for Development

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 Valuer at the cost of the applicant.

Requirements for a loan Application

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; and

(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.

Leasehold property

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.

Maximum loan disbursement

12. (1) The loan amount that a Member of County Assembly or a Member of Staff may receive shall be the value of the property that the Member of County Assembly or a Member of Staff proposes to purchase and develop subject to the available funds and the maximum limit set by the Salaries and Remuneration Commission.

(2) A Member of County Assembly or a Member of Staff 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 job before fully repaying the loan.

(3) Subject to these Regulations, a Member of County Assembly shall be eligible for the maximum amount of loan specified under paragraph (1) in each term of the Member of County Assembly.
(4) For a member of Staff to qualify for a loan, such a member shall be required to be—

(a) confirmed in appointment; or

(b) on permanent and pensionable basis.

(5) Where a Member of Staff leaves public service employment for whatever reason other than disciplinary grounds, the terms of the loan remains in force and does not change for the life of the loan unless in cases of default in which case it reverts to commercial terms.

Repayment of loan

13. A loan granted under these Regulations shall be fully repaid within a period of not more than twenty (20) years for a member of staff and a period of not more than five (5) years for a member of County Assembly.

Interest on loans

14 (1) The interest chargeable on a loan shall be three per centum per annum on a monthly reducing balance for the duration of the loan.

(2) A mortgage institution appointed under regulation 7 to administer the Fund may charge an interest of not more than 3 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.

Lien

15. (1) The Government 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.

Mortgage insurance

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.

Default in repayment

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.

Functions of the officer administering the Fund

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.
Responsibilities of mortgage institution

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.

Supplementary terms

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.

Made on the 5th April, 2018

DOROTHY I. NAIVASHA,
County Executive Committee Member for Finance and Economic.