LEGAL NOTICE NO. 3

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

IN EXERCISE of the powers conferred by section 116(1) of Public Finance Management Act, 2012, the Turkana County Executive Member for Finance, makes the following Regulation—

THE PUBLIC FINANCE MANAGEMENT (TURKANA COUNTY EXECUTIVE STATE AND PUBLIC OFFICERS MORTGAGE SCHEME FUND) REGULATIONS, 2016

Citation

1. These Regulations may be cited as the Public Finance Management (Turkana County Executive State and Public Officers Mortgage Scheme Fund) Regulations, 2016.

Interpretation

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

“Act” means the Public Finance Management Act, 2012

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

‘borrower’ means a person in receipt of a mortgage out of the Fund;

‘Committee’ means the Loan Management Committee established under these Regulations;

“Officer administering the Fund” means the Administrator appointed under regulation 7.

“Government” means the Turkana County Government;

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

“Public Officer” means any person appointed by the County Government and holding or acting in any County public office whether Paid, unpaid or on contractual or permanentet terms but does not include a person engaged on a part time basis in a county public body paid at an hourly or daily rate;

“hire purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee;

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

‘Member of the Scheme’ means County Executive State and Public Officers of Turkana County Government appointed pursuant to Article 179(1) of the constitution,
recruited by the Board and others being on secondment under permanent and pensionable terms within the public service;

'Board' means County Public Service Board established under section 57 of the County Governments Act, No. 17 of 2012.

Establishment of the Fund

3. There is hereby established a fund to be known as the Turkana County Executive State and Public Officers Mortgage Scheme Fund.

Object and Purpose of the Fund

4. The object and purpose of the Fund shall be to provide a loan scheme for the purchase, development, renovation or repair of residential property by Turkana County Executive State and Public Officers as prescribed by the Salaries and Remuneration Commission in their letter dated 17th December 2014 referenced as SRC/ADM/CIR/1/13/Vol. III(128)

Initial Capital and other resources of the Fund

5. (1) The initial capital of the Fund shall be Kenya Shillings Eighty Million (KSh. 80,000,000) consisting of monies appropriated by the County Assembly in the supplementary appropriation FY2015/2016.

(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 the Government and appropriated by the County Assembly;

(c) all sums of money borrowed by the Committee with the approval of the County Assembly 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 lawful manner become payable to or vested in the Fund including gifts, grants, wills and donations.

Loans Management Committee

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

(a) chairperson—The County Secretary;

(b) vice-chairperson—Chief Officer Public Service, Decentralized Administration and Disaster Management;

(c) secretary—Chief Officer Finance and Planning;

(d) member—Chief Officer - Roads, Transport and Infrastructure;

(e) member—Director - Urban Areas Management;

(f) member—Director - Supply Chain Management;

(g) member—Director of HRM;

(h) member—Deputy Director HRM and payroll Management;

(i) two members of staff, male and female nominated by the staff members; and

(j) the County Executive Legal Officer as Ex – Officio Member.
The Turkana County Subsidiary Legislation, 2016

(2) The officer administering the Fund designated under regulation 8 shall be an ex-officio member of the Committee and the secretary to the Committee.

(3) 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.

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

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

(6) The Committee shall administer 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 disbursements of the loans; and

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

Administration of the Fund

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

(2) The person designated in paragraph (1) may also be designated as the officer administering the Car Loan Scheme Fund.

(3) The officer administering the Fund shall—

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

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

(c) cause to be kept proper 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 months after the end thereof, a statement of accounts relating to the Fund, prepared specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Executive Committee member may from time to time direct in accordance with Public Finance Management Act;

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

(f) furnish such additional information as he may deem to be proper and sufficient for the purpose of examination and audit by the Auditor-General.

(4) In order to effectively administer the Fund, the Officer Administering the Fund may request the Committee to hire staff for the Fund. The terms and conditions of service of staff shall be determined by the Committee and their salaries, wages and other expenses shall be a charge on the Fund.
Mortgage Institution

8. The Committee may appoint a mortgage institution to administer the Fund on its behalf.

Operation of the Fund

9. (1) A member of the scheme 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 a form as the Committee may prescribe.

(2) The officer administering the Fund shall satisfy himself or herself of the applicant’s financial status and capacity to repay the loan applied for and where so satisfied shall forward the application to the Committee for consideration.

(3) A loan 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 loan 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 to the land on which the development is intended to be carried out;

(b) in two installments, 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 (3) (b) shall not exceed forty per cent of the maximum loan amount for which the member of the Scheme is eligible.

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

Disbursement of loans for development

10. 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 or quantity surveyor at the cost of the applicant.

Application for Loan

11. (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 Government department;

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

(c) an official search of the title and or allotment letter accompanied by requisite documents to the property intended to be purchased;

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

(e) a valuation report from a registered valuer.
(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 installments 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 Legal Officer and or advocate appointed by the committee.

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 loan repayment date.

Loan amounts

13. The maximum loan amount that a member of the Scheme may receive shall be subject to the relevant SRC circular.

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

(3) A loan granted to a borrower under these Regulations shall be funded at the rate of eighty per centum (80%) of the value of the property and the borrower shall be required to deposit the balance thereof with the Fund.

(4) Subject to these Regulations, a member of the Scheme shall be eligible for the maximum amount of loan specified under paragraph (1) or any other maximum as may be determined from time to time in each Executive term.

Repayment of loan

14. The repayment of the loan granted under these Regulations shall be made through a check-off system from the member’s monthly emoluments using loan check-off forms prescribed by the Committee.

Interest rate

15. (1) The loan granted to a member of the Scheme under these Regulations, shall carry an interest rate of three per cent (3%) per annum.

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

Repayment period

16. A loan advanced under these Regulations shall be repaid in full over a maximum period of twenty (20) years or by end of the member’s term as state officers whichever comes earlier.

Mortgage Insurance

17. A borrower shall take out and maintain a mortgage protection policy and a fire policy with an insurance company competitively sourced by the Committee, the cost of which shall be paid out of the Fund and debited in the borrower’s account.

Property documents

18. (1) 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.
(2) Documents referred to in paragraph (1) shall include title deeds, allotment letters and authentic sale agreements.

Default in repayment of loan

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 appointed under these Regulations shall be—

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

(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 loan outstanding and the proceeds of the sale.

Loan discharge

21. Upon full repayment of the loan, a signed loan 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.

Loan processing procedures

22. The Committee shall prescribe the procedures and the criteria for loan 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; and

(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 Executive Committee Member and the Committee on or before the tenth day after the end of the quarter.
Audit of books of account and financial statements

24. The annual financial statements of the Fund shall be subject to audit by the Auditor-General.

Supplementary terms

25. 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 give guidelines

26. The County Executive Committee member may, with the approval of the County Executive, amend the regulations generally for the proper carrying 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 loan and 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 loan may be obtained;

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

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

Made on the 5th February, 2016.

PAUL EKWOM NABUIN,

County Executive Committee Member, Finance and Planning.