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LEGAL NOTICE NO 6

THE PUBLIC FINANCE MANAGEMENT ACT

(No 18 of 2012)

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

THE PUBLIC FINANCE MANAGEMENT (BARINGO COUNTY  
EXECUTIVE MORTGAGE SCHEME FUND) REGULATIONS  
2018

1 These Regulations may be cited as The Public Finance Management (Baringo County Executive Mortgage Scheme Fund) Regulations 2018 Citation

2 In these Regulations unless the context otherwise provides— Interpretation

applicant means a Member of Baringo County Executive Committee County Public Service of County Chief Officer as defined in the County Government Act 2012

board means the County Executive Service Board established under section 12 of the County Governments Act 2012

financial year means the period of twelve months ending on the 30<sup>th</sup> June in each year

borrower means a person in receipt of a car Mortgage and or mortgage out of the fund

'committee means the Mortgage Management Committee established under these Regulations

officer administering the Fund means the Administrator appointed under regulation 7

government means the Baringo County Government

member of the county executive means a member elected or nominated in accordance with Article 179 (1) of the Constitution

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

accounting standards board means the Board as provided under section 192 of the Public Finance Management Act 2012

3 There is hereby established a Fund to be known as The Baringo County Executive Mortgage Scheme fund	Establishment 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 Baringo County Executive Committee Public Service Board County Chief Officers and other county public service officers as determined by the Salaries and Remuneration Commission	Object and Purpose of the Fund
5 (1) The initial capital of the Fund shall consist of monies appropriated by the County Assembly	Initial Capital and other resources of the Fund
<p>(2) Other resources of the Fund shall consist of—</p> <p>(a) all sums of money received by or falling due to the Fund in respect of Mortgages made there from and the interest on those Mortgages</p> <p>(b) any amounts that may from time to time be allocated by Government and appropriated by the County Assembly</p> <p>(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</p> <p>(d) all sums of money earned by or arising from investment made in respect of the Fund</p> <p>(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</p>	
6 (1) There is established a committee to be known as the Members Mortgage Mortgages Management Committee which shall consist of—	The Mortgages Management Committee
<p>(a) the County Executive member for Finance</p> <p>(b) the County Executive member for Land Housing and Urban Development</p> <p>(c) the County Executive member for Industrialization Commerce Tourism and Ent Development</p> <p>(d) county Secretary</p> <p>(e) chairman County Public Service Board</p> <p>(f) the Chief Officer for Finance</p> <p>(g) administrator of the fund who shall be the secretary of the committee appointed Regulation 8</p> <p>(g) the County Executive Legal Officer (<i>ex officio</i> Member)</p>	
(2) The officer administering the Fund designated under Regulation 7 shall be an <i>ex officio</i> 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 three members

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

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

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 the Public Finance Management Act 2012

Administration of the Fund

(2) The person designated as the officer administering the Car Mortgage Scheme Fund may also be designated as the officer administering this Fund

(3) 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 disbursements of the Mortgages and
- (c) supervise the day-to-day running of the Fund

(4) 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 also 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 CEC member may from time to time direct in accordance with Public Finance Management Act
- (e) shall cause the safe keeping of documents for all properties acquired under the Fund shall furnish such additional information as he may deem to be proper and sufficient for the purpose of examination and audit by the Auditor General

8 (1) A person eligible for a mortgage under these regulations who wishes to apply for a Mortgage 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

Operation of the Fund

(2) The officer administering the Fund shall satisfy himself 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 and 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

(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 Mortgage amount for which the member of the Scheme is eligible

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

Application for Mortgage

(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 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

(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

10 A Mortgage granted for the development of a residential property under these Regulations shall be released to the applicant in the following phases—

Disbursement of Mortgages for development of property

- (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

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

Leasehold property

12 (1) The amount of Mortgage to a member of the Mortgage Scheme shall be as provided by Salaries and Remuneration Commission (the Committee may consider availability of funds and needs of other applicants while determining the amount to a member)

Mortgage amounts

(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

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

Repayment of Mortgage

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

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

Interest rate

(2) A mortgage institution appointed under regulation 8 to administer the Fund may charge an interest of not more than five per centum to cover management costs

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

- 15 (1) A Mortgage advanced under these Regulations shall be repaid in full over a maximum period of 20 (twenty) years Repayment period
- (2) Where a State Officer or Public Officer leaves public service employment for whatever reason other than disciplinary grounds the terms of the Mortgage remains in force and does not change for the life of the Mortgage unless in cases of default in which case it reverts to commercial terms
- 16 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 such borrower s account Mortgage Insurance
- 17 (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 Property documents
- (2) Documents referred to in Subsection (1) shall include title deeds authentic allotment letters and sale agreements
- 18 The Committee may call in a Mortgage and in default sell the charged property by public auction or private treaty where the borrower is in breach of the terms under the Mortgage agreement or the covenant contained in the charge of the mortgage instrument Default in repayment of Mortgage
- 19 The responsibilities of the mortgage institution appointed under these regulations shall be— Responsibilities of mortgage institution
- (a) to operate individual accounts for each borrower which shall provide details of recoveries of Mortgage
  - (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 Mortgage 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 the sale
- 20 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 discharge

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

Mortgage processing procedures

22 (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—

Proper books of accounts

- (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 County Executive Committee Member and the Committee on or before the tenth day after the end of the quarter

23 The annual financial statements of the Fund shall be subject to audit by the Auditor General

Audit of books of account and financial statements

24 (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

Supplementary terms

(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

25 The County Executive Committee member may with the approval of the County Assembly may amend the regulations generally for the proper carrying out of the purposes and provisions of these regulations and in particular may make provisions—

Power to amend Regulations

- (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 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 Mortgage may be obtained
- (d) prescribing the procedure to be followed prior to the obtaining of a mortgage 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

(With these regulations the Baringo County Emergency Fund Regulations 2015 is repealed)

Made on the 5th February, 2018

DAVID SERGON,  
*County Executive Committee Member for Treasury and Economic Planning*