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SPECIAL ISSUE

Kenya Gazette Supplement No. 2

15th February, 2018

(Baringo County Legislative Supplement No. 2)

LEGAL NOTICE NO. 2

THE PUBLIC FINANCE MANAGEMENT (BARINGO COUNTY ASSEMBLY
(MEMBERS) MORTGAGE SCHEME FUND)) REGULATIONS, 2018

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PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

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

THE PUBLIC FINANCE MANAGEMENT (BARINGO COUNTY ASSEMBLY (MEMBERS) MORTGAGE SCHEME FUND)) REGULATIONS, 2018

Citation

1. These Regulations may be cited as The Public Finance Management (Baringo County Assembly (Members) Mortgage Scheme Fund)) Regulations, 2018.

Interpretation

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

“applicant” means a Member of Baringo County Assembly elected or nominated pursuant to Article 177(1) of the constitution;

“board” means the County Assembly Service Board established under section 12 of the County Governments 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 car loan and or 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 8;

“government” means the Baringo County Government;

“member of the County Assembly” means a member elected or nominated in accordance with Article 177(1) of the Constitution;

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

“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.

Establishment of the Fund

3. There is hereby established a Fund to be known as The Baringo County Assembly (Members) 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 members of the by members of the County Assembly as shall be determined by the Salaries and Remuneration Commission.

Initial Capital and other resources of the Fund

5. (1) The initial capital of the Fund shall consist of monies appropriated by the County Assembly in the Supplementary Appropriation Act of 2018.

(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 therefrom and the interest on those loans;
- (b) any amounts that may from time to time be allocated by 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 manner become payable to or vested in the Fund including gifts, grants, wills and donations.

The 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) the Speaker of the County Assembly who shall be the Chairperson to the committee;
- (b) leader of Majority Party to the County Assembly;
- (c) leader of Minority Party to the County Assembly;
- (d) one person appointed to the County Assembly Service Board under section 12 (3) (d) of the County Government Act (2012);
- (e) two Members elected by members of the County Assembly, one representing either gender;
- (f) the County Assembly Head of Finance. (Ex – officio member);
- (g) the County Assembly Legal Officer. (Ex – Officio Member);
- (h) the County Chief Officer, Treasury and Economic Planning or his/her representative (Ex – Officio Member).

(2) The officer administering the Fund designated under Regulation 7 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 three members.

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

Administration of the Fund

7. (1) The County Executive Committee (CEC) member for finance shall designate a person responsible for administering of the Fund in accordance with section 116(2) of PFM Act, 2012.

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

(3) 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.

(4) The officer administering the Fund—

- (a) shall 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) shall 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) 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;
- (f) 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.

(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.

Operation of the Fund

8. (1) A member of the Assembly 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 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 and 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

9. 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/quantity surveyor at the cost of the applicant.

Application for loan

10. 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 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.

Leasehold property

11. 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

12. (1) The maximum loan amount that a member of the Scheme may receive from the Fund shall be Kenya Shillings three million (KSh. 3,000,000).

(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) 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 Assembly term.

Repayment of loan

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

Interest rate

14. (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) 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.

Repayment period

15. A loan advanced under these Regulations shall be repaid in full over a maximum period of sixty (60) months or end of the member's term in Assembly whichever comes earlier.

Mortgage Insurance

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.

Property documents

17. 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 of loan

18. 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

19. 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

20. 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

21. 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

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—

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

Audit of books of account and financial statements

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

Supplementary terms

24. 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 amend Regulations

25. The County Executive Committee member may, with the approval of the County Assembly, 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.

Repeal

26. The Public Finance Management (Baringo County Assembly (Members) Mortgage Scheme Fund)) Regulations, 2014 is repealed by these regulations.

Made on the 5th February, 2018

DAVID SERGON,
County Executive for Finance.