



LEGAL NOTICE NO... ..

THE AFFORDABLE HOUSING ACT
(No. 2 of 2024)

THE AFFORDABLE HOUSING REGULATIONS, 2024

ARRANGEMENT OF REGULATIONS

- 1— Citation.
- 2— Interpretation.
- 3— Eligibility for exemption.
- 4— Application for exemption.
- 5— Validity of an exemption.
- 6— Revocation of exemption.
- 7— Eligibility for allocation.
- 8— Application for allocation.
- 9— Rate of deposit.
- 10— Deposit assistance.
- 11— Inclusivity and diversity within affordable housing schemes.
- 12— Change of affordable housing unit.
- 13— Reallocation due to default in payment.
- 14— Change of defaulter’s unit to a lower value unit.
- 15— Loan interest rate or administration fee.
- 16— Eligibility to enter agreement to develop institutional housing.
- 17— Application for approval to develop institutional housing.
- 18— Implementation of institutional housing through implementing agencies.
- 19— Agreements with approved institutions and mortgage schemes.
- 20— Eligibility to enter into an off-take agreement for financing.
- 21— Application for approval.
- 22— Interest rate or administration fee on agreement for financing.
- 23— Eligibility for off-take.
- 24— Application for approval to offer for off-take.
- 25— Associated social and physical infrastructure.
- 26— Conduct of public participation.
- 27— Agreement with private institutions.
- 28— Notice of affordable housing project on settlement.
- 29— Withdrawal of voluntary savings.
- 30— Rural affordable housing unit.
- 31— Restriction on disposal of affordable housing unit.
- 32— Application for consent to sell an affordable housing unit.

SCHEDULE

LEGAL NOTICE NO.....

THE AFFORDABLE HOUSING ACT
(No. 2 of 2024)

IN EXERCISE of the powers conferred by section 59 of the Affordable Housing Act, 2024, the Cabinet Secretary for the Lands, Public Works, Housing and Urban Development makes the following Regulations—

THE AFFORDABLE HOUSING REGULATIONS, 2024

Citation. **1.** These Regulations may be cited as the Affordable Housing Regulations, 2024.

Interpretation. **2.** In these Regulations, unless the context otherwise requires—

No. 2 of 2024. “Act” means the Affordable Housing Act, 2024;

 “administration fee” means any payments made in relation to a *sharia* compliant facility for the purchase of an affordable housing unit under the Act;

 “agreement for financing” means an agreement entered into in accordance with section 45 of the Act;

 “annual investment programme” means the annual investment programme prepared in accordance with section 15 of the Act;

 “deposit assistance” means a low-interest loan, administrative fee or grant issued by the Board in accordance with regulation 10 towards raising a deposit for the purchase of an affordable housing unit;

 “financing institution” includes a commercial bank, microfinance bank, mortgage finance institution or a mortgage refinancing company;

 “Levy” has the meaning assigned to it under section 2 of the Act;

 “off-take” means a financial commitment to purchase an affordable housing unit under an approved affordable housing scheme;

 “off-take agreement” means an agreement entered

into by the Board under regulation 21(4) for the off-take of affordable housing units;

“physical infrastructure” means the infrastructure provided under regulation 24(2)(a);

“social amenities” means the social amenities provided under regulation 24(2)(b);

“tenant purchase scheme” means a purchase arrangement under Regulation 13(4) where the monthly payments for rent by the tenant purchaser or occupant contribute to offsetting the principal amount required to acquire the house.

Eligibility for exemption.

3. (1) A person or category of persons may be exempted from the payment of the Levy where that person is exempted from the imposition of taxes under an international agreement or a host country agreement to which Kenya is a Part of.

(2) An income or a class of income may be exempted from the Levy where the income is—

- (a) derived from the pension or gratuity paid to a person upon termination of a contract;
- (b) a reimbursement of medical expenses or travel and accommodation expenses for work-related activity; or
- (c) derived from an insurance compensation;
- (d) exempt from levy or income tax under an Act of Parliament.

Application for exemption.

4. (1) A person or category of persons or any income or class of income not covered under Section 6 for the Act may be exempted from the imposition of the Levy.

(2) An application for exemption under subregulation (1) shall be—

- (a) made, in writing, to the Cabinet Secretary specifying the reasons for the request for exemption; and
- (b) accompanied by the tax clearance certificate of the applicant.

(3) Within thirty days of receipt of an application under subregulation (1), the Cabinet Secretary shall make a determination on the application and notify the applicant of the decision.

(4) The Cabinet Secretary may seek additional information from the relevant authorities when considering the application under this regulation to facilitate the consideration of the application.

(5) Where an application under this regulation is approved, the Cabinet Secretary shall, in writing, make a recommendation to the Cabinet Secretary responsible for the National Treasury in accordance with section 6 of the Act.

(6) Upon receipt of the recommendation under sub regulation (5), the Cabinet Secretary responsible for the National Treasury shall make a determination and –

- (a) where the exemption is approved, issue a notice in accordance with section 6 of the Act; or
- (b) where the exemption is rejected, notify the Cabinet Secretary of the decision indicating the grounds for rejection.

(7) The Cabinet Secretary shall notify the applicant of the decision made under sub regulation (6).

Validity of an exemption.

5. An exemption issued under regulation 4 shall be valid for the period and to the extent specified in the notice.

Revocation of exemption.

6. The Cabinet Secretary may, in writing, make a recommendation to the Cabinet Secretary responsible for the National Treasury for the revocation of an exemption granted in accordance section 6 of the Act where the Cabinet Secretary—

- (a) has received information that disqualifies the person from further being exempted;
- (b) determines that the person who has been exempted omitted material information when making the application under regulation 5 and that, if such information was submitted, that information may have affected the eligibility of

the person or the income from exemption;

- (c) becomes aware that the person obtained the exemption fraudulently.

Eligibility for allocation.

7. A person shall be eligible to apply for the allocation of an affordable housing unit if that person—

- (a) is a citizen of Kenya;
- (b) is above the age of eighteen years;
- (c) has not been previously allocated an affordable housing unit by the Board.

Application for allocation.

8. (1) An application for the allocation of an affordable housing unit shall be made in the manner specified by the Board and accompanied by the documents set out in section 49 of the Act.

(2) In accordance with section 49(2) of the Act, an application for allocation of an affordable housing unit shall be accompanied by—

- (a) the deposit payable at the rate specified in regulation 10;
- (b) any of the following alternative documents as proof of identification—
 - (i) a valid passport;
 - (ii) a military identification document;
- (c) details or a list of beneficiaries of the applicant;
- (d) proof of income and ability to repay for the loan;
- (e) a passport size photo of the applicant;
- (f) where applicable –
 - (i) the enumerated unique identification document for slum upgrading projects; or
 - (ii) a person with disability identification card.

(3) Upon receipt of an application under this regulation, the Board shall make a determination and notify the applicant of the decision.

(4) Where an application under this regulation is approved, the Board shall allocate an affordable housing unit to the successful applicant.

(5) Where an application under this regulation is rejected, the Board shall notify the applicant of its decision indicating the grounds for rejection.

Rate of deposit.

9. The deposit payable by a person who is eligible for allocation of an affordable housing unit under regulation 8 shall be at the rate of ten percent of the sale price.

Deposit assistance.

10. (1) A person who is unable to raise a deposit stated under regulation 9 may apply to the Board for deposit assistance.

(2) A person shall be eligible for deposit assistance under subregulation (1) if—

- (a) the person's monthly income is below twenty thousand Kenya shillings;
- (b) the person demonstrates that the affordable housing unit to be purchased shall be their primary residence; and
- (c) the estimated monthly repayment for the purchase of the affordable housing unit is less than thirty percent of the applicant's monthly income

(3) Despite the provisions of subregulation (2), a person may be eligible for deposit assistance if the person meets the criteria set by the Board on the ability to pay the deposit.

(4) An application for deposit assistance under subregulation (1) shall be made in writing—

- (a) specifying the monthly income of the applicant;
- (b) providing evidence of the circumstances limiting their ability to raise the required

deposit;

(c) providing any other relevant information.

(5) Upon receipt of an application under subregulation (4), the Board shall make a determination and within fourteen days of making the decision, notify the applicant of its decision.

(6) Any monies paid as deposit assistance shall be repaid at a rate or administrative fee of zero percent.

Inclusivity and diversity within affordable housing schemes.

11. When developing an affordable housing scheme, the Board shall ensure that—

(a) there is equitable access to diverse groups and persons in the construction, allocation, management and maintenance of the affordable housing projects;

(b) in the development of the five year affordable housing investment programme, it takes into account the equitable distribution of housing programs across Kenya;

(c) the development of affordable housing schemes integrates all the categories of affordable housing units provided in section 2(2)(a), (2)(b) and (2)(c) of the Act.

Change of affordable housing unit.

12. (1) A person may apply for change of an affordable housing unit before or after taking possession of the affordable housing unit.

(2) An application for change of an affordable housing unit shall be made, in writing, to the Board indicating the reasons for the desired change.

(3) A person who has not taken possession of an affordable housing unit may apply for a change of an affordable housing unit if the person—

(a) meets the specified allocation criteria for the unit applied for;

(b) agrees to forfeit their allocated affordable housing unit for reallocation to another eligible person.

(4) A person who has taken possession of an affordable housing unit may apply for a change of an affordable housing unit if the person—

- (a) meets the specified allocation criteria for the unit applied for;
- (b) surrenders the unit in a tenantable condition to the satisfaction of the Board:

Provided that, where the person does not refurbish the unit as required, the Board may renovate and recover the cost of refurbishing the unit to tenantable condition from the person;

- (c) has paid all the service charge for the unit and the levy due has been settled.

(3) Upon receipt of an application under this regulation, the Board shall make a determination and notify the applicant of its decision.

(4) Where an application under this regulation is approved, the Board shall—

- (a) allocate an appropriate affordable housing unit to the applicant;
- (b) transfer all the payments made by the applicant to the account for the newly allocated affordable housing unit;
- (c) where a person opts for the allocation of a cheaper unit, credit the person's account with the requisite amount for the newly allocated affordable housing unit and refund any excess payment.

(5) Where an application under this regulation is rejected, the Board shall notify the applicant of its decision indicating the reasons for rejection.

Reallocation due to default in payment.

13. (1) Where a person allocated an affordable housing unit defaults in the payments for their unit and continues to be in default for one month, the Board shall, issue a notice, in writing, to that person requiring the default to be remedied.

(2) The notice issued under subregulation (1) shall

specify–

- (a) the outstanding amount that must be paid to rectify the default;
- (b) the period of time for the payment of the outstanding amount; and
- (c) any other relevant information.

(3) Where a person fails to remedy the default as required under subregulation (2) for four consecutive months, the Board shall–

- (a) shall take possession of the affordable housing unit;
- (b) may reallocate the affordable housing unit to another eligible person in accordance with these Regulations;
- (c) may change the person’s affordable housing unit to a lower value unit in accordance with regulation 13; or
- (d) may enter into a restructuring arrangement with the person in default.

(4) The action undertaken under this regulation shall only apply to payments made through cash basis, mortgage or a tenant purchase scheme.

Change of defaulter’s unit to a lower value unit.

14. (1) The Board may change an affordable housing unit to a lower value unit under regulation 13, where–

- (a) the defaulter meets the allocation criteria specified for the lower value unit;
- (b) where the payments made would cover the purchase price of the lower value unit:

Provided that the defaulter has not entered into a loan restructuring arrangement in accordance with the Act.

(2) For purposes of this regulation, “defaulter” means a person who has not paid their monthly payments for their unit for four consecutive months.

Loan interest rate or administration fee.

15. Pursuant to section 51, the interest rate or administration fee for a loan issued under the Act shall be payable, where applicable, on a reducing balance at the rate not exceeding nine percent of the issued amount.

Eligibility to enter agreement to develop institutional housing.

16. A public institution is eligible to enter into an agreement with the Board to develop institutional housing where the institution satisfies the Board that—

- (a) there is a need for institutional housing for its purposes;
- (b) it has land available and has or shall set aside for the development of the respective institutional housing; and
- (c) it has systems and structures for management and maintenance of the respective institutional housing.

Application for approval to develop institutional housing.

17. (1) A public institution that meets the requirements specified under regulation 16 and intends to develop institutional housing, shall make an application, in writing, to the Board for approval.

(2) An application under subregulation (1) shall be accompanied by the requisite decision or resolution made by the governing body of the public institution or the person administering, controlling and managing the public institution.

(3) Upon receipt of an application under this regulation, the Board shall make a determination and notify the applicant of its decision.

(4) Where an application under this regulation is approved, the Board shall –

- (a) incorporate the proposed institutional housing into the annual investment programme of the Board;
- (b) enter into an agreement with the public institution to develop the respective institutional housing on such terms and conditions as may be specified in the agreement including specifications on the development, maintenance, administration,

and collection of payments due to the Board, and the collection of its investment into the institutional housing.

(5) Where an application under this regulation is rejected, the Board shall notify the applicant of its decision indicating the reasons for the rejection.

Implementation of institutional housing through implementing agencies.

18. In the implementation of institutional housing, the Board shall engage an appropriate implementing agency set out in the First Schedule of the Act to facilitate the design, development and maintenance of the approved institutional housing units.

Agreements with approved institutions and mortgage schemes.

19.(1) Pursuant to section 45(1) of the Act, the Board may enter into an agreement for financing with approved institutions or mortgage schemes.

(2) The institutions envisaged under subregulation (1) include—

- (a) an institution established by the National Government or the County Governments for purposes of providing mortgages;
- (b) a financing institution licenced by the Central Bank of Kenya;
- (c) an institution licenced by the Retirement Benefits Authority;
- (d) an institution licenced by the Capital Markets Authority; or
- (e) a Savings and Credit Cooperative (SACCO) society licensed by Sacco Societies Regulatory Authority.

Eligibility to enter into an agreement for financing.

20. An institution or a mortgage scheme under regulation 19 is eligible to enter into an agreement under section 45 of the Act where the mortgage scheme or institution—

- (a) satisfies the Board that it is creditworthy where applicable;
- (b) is tax compliant; and
- (c) meets such other condition that the Board

considers fit.

Application for approval.

21. (1) An institution or mortgage scheme which meets the requirements specified under regulation 20 and intends to provide financing for off-take, shall make an application in writing to the Board for approval.

(2) An application made under subregulation (1) shall be accompanied by—

(a) a copy of the certificate of incorporation, registration certificate, where applicable;

(b) a certified copy of valid licence in respect of the business conducted by the applicant from the relevant regulatory agency, where applicable;

(c) a copy of Kenya Revenue Authority personal identification number and Tax Compliance Certificate;

(d) any other relevant document.

(3) Upon receipt of an application under subregulation (1), the Board shall make a determination and within fourteen days of making the decision, notify the applicant of its decision.

(4) Where an approval is issued under subregulation (3), the Board shall enter into an off-take agreement with the approved institution or mortgage scheme on such terms and conditions as may be specified in the agreement.

(5) Where an application is rejected, the Board shall notify the applicant of the decision and specify the reasons for the rejection within fourteen days.

Interest rate or administration fee on agreement for financing.

22. (1) The interest rate or administration fee that may be charged by an approved institution or mortgage scheme under an agreement for financing shall not exceed nine percent of the unit per annum.

(2) The respective rate or fee payable under subregulation (1) shall be based on the typology and dimensions of the affordable housing units relative to the incomes of the individual applicants.

Eligibility for off-

23. (1) In addition to the criteria set out in section

take.

50(1) of the Act, the Board may off-take affordable housing units under an affordable housing scheme if the institution undertaking the affordable housing scheme—

- (a) meets the criteria for the development of affordable housing units as provided for under the Act;
- (b) is creditworthy, where applicable; and
- (c) is tax compliant.

(2) The schemes under subregulation (1) includes public affordable housing schemes and private affordable housing schemes.

Application for approval for off-take.

24.(1) An implementing agency that meets the requirements under regulation 23 shall make an application, in writing, to the Board for approval to offer an affordable housing unit for off-take.

(2) An application made under subregulation (1) shall be accompanied by—

- (a) copy of certificate of incorporation or registration certificate, where applicable;
- (b) a copy of Kenya Revenue Authority personal identification number and tax compliance certificate;
- (c) the proposed off-take price;
- (d) the proposed typology and number of units;
- (e) the proposed physical infrastructure and social amenities.

(3) Upon receipt of an application under this regulation, the Board shall make a determination and within fourteen days of making the decision, notify the applicant.

(4) Where an application under this regulation is approved, the Board shall enter into an off-take agreement with the institution on such terms and conditions as may be specified in the agreement.

(5) Where an application under this regulation is rejected, the Board shall notify the applicant of its

decision indicating the grounds for rejection.

Associated social
and physical
infrastructure

25. (1) In the performance of its function to develop associated social and physical infrastructure, the Board shall develop physical infrastructure and social amenities for purposes of the Act.

(2) For purposes of subregulation (1), –

(a) physical infrastructure includes–

- (i) access roads and parking;
- (ii) non-motorised transport including walkways;
- (iii) storm water drainage;
- (iv) sewer line connection;
- (v) water reticulation services;
- (vi) liquefied petroleum gas reticulation services;
- (vii) streetlighting;
- (viii) internet connection;
- (ix) high mast lighting;
- (x) connection to an electricity supply;
- (xi) any other related infrastructure; and

(b) social amenities include–

- (i) a health facility;
- (ii) an education or training institution;
- (iii) a fire station;
- (iv) a police post;
- (v) a social hall;
- (vi) a market;
- (vii) any other related amenities.

Conduct of public participation.

26. (1) When conducting public participation and stakeholder engagement under section 41(2) of the Act, the Board shall—

- (a) issue at least a fourteen days' notice to the members of the public and interested parties specifying period for public participation, date and time for each location, and the purpose of the public participation or stakeholder engagement;
- (b) publish in two newspapers of nationwide circulation, the notice referred to in paragraph (a); and
- (c) publish the notice referred to in paragraph (a) in a radio station that has wide coverage within the County.

(2) The Board shall not conduct public participation or stakeholder consultations on county land that has not been approved for allocation by the respective County Assembly and the National Land Commission.

(3) Where the implementation of an affordable housing scheme or institutional housing is undertaken by an implementing agency or an institution authorised by the Board, the agency or institution shall conduct public participation and stakeholder engagement in accordance with this regulation.

Agreement with private institutions.

27. (1) For purposes of section 44 of the Act, a notice of intention to enter into an agreement with a private institution issued by the Board shall specify—

- (a) the name of affordable housing project;
- (b) the name of the private institution proposed to enter into an agreement with and joint venture partners, where applicable;
- (c) the cost of the affordable housing project;
- (d) the location of the affordable housing project;
- (e) the scope of the works required in the development of the affordable housing

unit;

(f) the period of the affordable housing project;

(g) any other relevant information.

(2) An invitation to tender issued by the Board to the members of the public for the purposes of section 44 of the Act shall specify—

(a) the name and address of the Board;

(b) the tender number assigned to the procurement proceedings by the Board;

(c) a brief description of the goods, works or services being procured including the time limit for delivery or completion;

(d) an explanation of how to obtain the tender documents;

(e) an explanation of where and when tenders shall be submitted and where and when the tenders shall be opened;

(f) a statement that those submitting tenders or their representatives may attend the opening of tenders;

(g) applicable preferences and reservations, where applicable;

(h) a declaration that the tender is only open to those who meet the requirements for eligibility;

(i) the requirement of serialisation of pages by the bidder for each bid submitted; and

(j) any other relevant information.

(3) An agreement under this regulation shall be implemented in accordance with the Act and other relevant laws.

Notice of
affordable
housing project
on settlement.

28. (1) Pursuant to section 47 of the Act, a notice of intention to implement an affordable housing project that is issued by the Board to a resident of a settlement on

which is to be developed shall be in Form 1 set out in the Schedule.

(2) Upon expiry of the period specified in the notice under subregulation (1), the Board shall implement a resettlement plan in accordance with the Act and other relevant laws.

Withdrawal of
voluntary savings.

29. Where a person seeks to withdraw their saving in a voluntary savings account in accordance with section 52(4)(a) of the Act, the administrator of the Fund shall, upon verification, refund the savings and any accrued interest to the person and close their savings account.

Rural affordable
housing unit.

30. (1) An application for a rural affordable housing unit under section 52 of the Act shall be made, in writing, to the Board and accompanied by—

- (a) building plans approved by the respective county government;
- (b) a valuation report of the land issued by the chief government valuer or a valuer registered under the Valuers Act;
- (c) a priced bill of quantities prepared by a registered quantity surveyor; and
- (d) a copy of the title to the land and official search of the land as proof of ownership of the land.

Cap. 532.

(2) The Board shall consider the application made under subregulation (1) where—

- (a) the applicant has an operational voluntary savings account with the Fund;
- (b) the applicant satisfies the Board that the mortgage shall be solely used for development of the affordable housing unit;
- (c) the amount applied for does not exceed four million shillings; and
- (d) the applicant satisfies the Board of their ability to repay the amount applied for.

(3) Upon receipt of an application under this

regulation, the Board shall make a determination and within fourteen days of making the decision, notify the applicant of its decision.

(4) Where an application under this regulation is approved, the Board shall—

- (a) enter into an agreement with the applicant for the financing of the development of the rural affordable housing unit on such terms and conditions as may be specified in the agreement;
- (b) credit the amount borrowed to the account of the applicant in accordance with the agreement; and
- (c) provide regular statements to the successful applicants.

(5) Where an application under this regulation is rejected, the Board shall notify the applicant of its decision indicating the reasons for the rejection.

Restriction on disposal of affordable housing unit.

31. (1) For purposes of section 54 of the Act, a purchaser shall not sell their affordable housing unit until eight years after completion of payment of the agreed price has lapsed.

(2) The provisions of subregulation (1) shall not apply to the purchase of an affordable housing unit through mortgage.

(3) Upon meeting the requirement under subregulation (1), a purchaser of an affordable housing unit who intends to sell or agrees to sell the unit or any interest therein to any other person shall seek the consent of the Board in accordance with section 54 of the Act.

Application for consent to sell an affordable housing unit.

32. (1) An application for consent to sell an affordable housing unit under regulation 31(3) shall be made, in writing, to the Board indicating the reasons for the request.

(2) Upon receipt of an application under this regulation, the Board shall make a determination and within fourteen days of making the decision, notify the applicant of its decision.

(3) In making a determination under subregulation

(3), the Board shall take into consideration whether—

- (a) the owner has been the proprietor of the affordable housing unit for at least eight years; and
- (b) the price at which the affordable housing unit is being offered for sale is within the prevailing market price.

(4) Where an application under this regulation is approved, the Board shall, in writing, issue the consent on the sale:

Provided that—

- (a) the affordable housing unit shall only be sold to a person eligible to own the respective housing unit under the Act; and
- (b) the Board has the priority of purchasing any affordable housing unit on sale.

(5) Where an application under this regulation is rejected, the Board shall notify the applicant of its decision indicating the reasons for the rejection.

SCHEDULE

FORM 1

(r. 21(1))

NOTICE OF INTENTION TO IMPLEMENT AFFORDABLE HOUSING PROJECT

The Affordable Housing Fund Board hereby gives notice to the residents of..... (Location), of the intention to implement and construct (Name of project) on L.R. No....., (Name of County).

The Project entails development and construction of(No.) affordable housing units and associated social and physical infrastructure that includes(project details).

Chairperson,

Affordable Housing Fund Board

Made on the.....2024.

ALICE WAHOME, EGH

Cabinet Secretary for Lands, Public Works, Housing, and Urban Development