



Working for integration



**The Housing Development Agency Act**  
**Act No. 23 of 2008**

**The Housing Development Agency**  
**Regulations**  
**No. R. 610**



# The Housing Development Agency Act No. 23 of 2008

# Act

To establish the Housing Development Agency; to provide for its functions and powers; and to provide for matters connected therewith.

## Preamble

**WHEREAS** the State has a constitutional imperative to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right of everyone to have access to adequate housing in terms of section 26 of the Constitution;

**AND WHEREAS** a significant factor in the lack of adequate delivery of housing to low-income earners has been the delay in the identification, acquisition, assembly and release of state-owned and private land;

**AND WHEREAS** there is a need to establish the Housing Development Agency which must fast-track the processes of housing development;

**AND WHEREAS** in terms of section 3(4)(h) of the Housing Act, 1997, the Minister may establish and finance national institutions for the purposes of housing development, and supervise the execution of their mandate;

**AND ACKNOWLEDGING** that in terms of Schedule 4 of the Constitution housing is a functional area of concurrent national and provincial legislative competence;

**AND FURTHER ACKNOWLEDGING** that there are serious challenges that hinder the realisation of housing for all, that there is a need to accelerate the delivery of housing, to enhance and secure the required skills;

**AND FURTHER ACKNOWLEDGING** that there is an urgent need for government to address the increasing backlog in respect of housing delivery together with a critical shortage of skills and capacity to provide housing in some provinces and municipalities.

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows: –

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# Definitions

1. In this Act, unless the context indicates otherwise –

**"acquire"** means to acquire in any manner, including by way of expropriation;

**"Agency"** means the Housing Development Agency, established by section 3;

**"Board"** means the Governing Board contemplated in section 9;

**"chief executive officer"** means the chief executive officer appointed in terms of section 17;

**"chief financial officer"** means the chief financial officer appointed in terms of section 17;

**"communal land"** means communal land as defined in section 1 of the Communal Land Rights Act, 2004 (Act No. 11 of 2004);

**"develop"** means improving or undertaking the development of land acquired by the Agency or the Agency giving subcontracts to developers to improve or to undertake the development of the acquired land by erecting buildings or structures for the purposes of housing delivery;

**"Director-General"** means the Director-General in the national department responsible for housing;

**"land"** includes a right in land;

**"landed property"** means land with improvements including buildings, structures and services;

**"mandate"** means the mandate of the Agency contemplated in section 3(4)(h) of the Housing Act, 1997 (Act No. 107 of 1997), and provided for in section 8 of this Act;

**"Minister"** means the Minister responsible for housing;

**"municipality"** means a municipality as contemplated in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);





**"organ of state"** means an organ of state contemplated in section 239 of the Constitution of the Republic of South Africa, 1996;

**"prescribe"** means to prescribe by regulation made under this Act;

**"priority housing development areas"** means land identified by the Agency for housing purposes where buildings or structures will be built for the purpose of housing delivery;

**"province"** means a provincial government acting through the Member of the Executive Committee responsible for housing;

**"Public Finance Management Act"** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**"relevant authority"** means provincial and local government including traditional authorities;

**"this Act"** includes regulations made under this Act.

## Purpose of Act

2. The purpose of this Act is to provide for the –
  - (a) establishment of the Agency which will facilitate the acquisition of land and landed property, in a way that complements the capacities of Government across all spheres;
  - (b) objects, roles, powers and duties of the Agency; and
  - (c) fast-tracking of land acquisition and housing development services for the purpose of creating sustainable human settlements.

## Establishment of Agency

3. (1) The Housing Development Agency is hereby established as a juristic person.
- (2) The Agency operates as a national public entity with its executive authority vested in the Minister.

## Objects of Agency

- 4.** The objects of the Agency are to—
- (a) identify, acquire, hold, develop and release state, communal and privately owned land for residential and community purposes and for the creation of sustainable human settlements;
  - (b) project manage housing development services for the purposes of the creation of sustainable human settlements;
  - (c) ensure and monitor that there is centrally coordinated planning and budgeting of all infrastructure required for housing development; and
  - (d) monitor the provision of all infrastructure required for housing development.

## Role of Agency

- 5.** (1) The Agency must, in consultation with the relevant owner, identify, acquire, hold, develop and release state, privately and communal owned land for residential and community purposes for the creation of sustainable human settlements.
- (2) The Agency must ensure that there is funding for the provision of all infrastructure that is required for housing development in which it is involved.
- (3) The Minister may, in consultation with the relevant MEC, where there is lack of capacity in any organ of state to identify, acquire, hold, develop and release land for residential and community purposes for the creation of sustainable human settlements –
- (a) advise the organ of state to conclude an agreement with the Agency to offer assistance in terms of the Agency's skill and expertise; or

- (b) direct the Agency to engage with the organ of state with a view to conclude the agreement contemplated in paragraph (a).
- (4) Nothing in this Act detracts from the power of a province and municipality to identify, acquire, hold, develop and release land for residential or community development without recourse to the Agency, in terms of their functions under the Housing Act, 1997 (Act No. 107 of 1997).

## Land which may be acquired

- 6.** (1) The Agency may, after consultation with the land owner, identify, acquire and hold land –
- (a) registered or vested in the State or any organ of state and which it is prepared to dispose of;
  - (b) privately owned; or
  - (c) communal land for residential or community development purposes.
- (2) Subject to section 25 of the Constitution of the Republic of South Africa, 1996, the Minister may expropriate land for the purposes of creating sustainable human settlements.
- (3) Sections 6 to 23 of the Expropriation Act, 1975 (Act No. 63 of 1975), apply with the changes required by the context to the expropriation of land, and a reference in that Act to –
- (a) Minister must be construed as a reference to the Minister responsible for housing; and
  - (b) section 2 must be construed as a reference to subsection (2).
- (4) Any consultation between organs of state in terms of this Act must be done in terms of Chapter 3 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

# Functions of Agency

## 7. (1) The Agency must –

- (a) develop a development plan to be approved by the Minister in consultation with the relevant authorities in the provinces and municipalities;
- (b) develop strategic plans with regard to the identification and acquisition of state, privately and communal owned land which is suitable for residential and community development;
- (c) prepare necessary documentation for consideration and approval by the relevant authorities as may be required in terms of any other applicable law;
- (d) monitor progress of the development of land and landed property acquired for the purposes of creating sustainable human settlements;
- (e) enhance the capacity of organs of state including skills transfer to enable them to meet the demand for housing delivery;
- (f) ensure that there is collaboration and intergovernmental and integrated alignment for housing development services;
- (g) identify, acquire, hold, develop and release state, privately and communal owned land for residential and community development;
- (h) undertake such project management services as may be necessary, including assistance relating to approvals required for housing development;
- (i) contract with any organ of state for the purpose of acquiring available land for residential housing and community development for the creation of sustainable human settlement;



- (j) assist organs of state in dealing with housing developments that have not been completed within the anticipated project period;
  - (k) assist organs of state with the upgrading of informal settlements; and
  - (l) assist organs of state in respect of emergency housing solutions.
- (2) In performing its functions, the Agency must –
- (a) ensure that residential and community developments are sustainable, viable and appropriately located;
  - (b) establish compliance and fraud prevention mechanisms to ensure the integrity of the Agency;
  - (c) ensure that job creation is optimised in the process of residential and community development;
  - (d) introduce and manage a land inventory and information system; and
  - (e) ensure that community participation takes place.
- (3) In performing its functions the Agency may –
- (a) declare priority housing development areas for residential and community purposes in accordance with integrated development plans and provincial spatial development frameworks;
  - (b) develop and submit a development plan for such priority housing development areas as contemplated in subsection 1(a); and
  - (c) implement such measures as may be prescribed to fast-track housing development in the declared priority housing development areas.

## Mandate

8. (1) The Minister must, after consultation with MINMEC, conclude a written mandate with the Agency as soon as possible, but not later than six months after the appointment of the Board.
- (2) The mandate must –
  - (a) contain the operational and performance indicators against which the performance of the Agency is measured;
  - (b) contain specific service delivery targets that the Agency must attain; and
  - (c) contain directions regarding the utilisation of any surplus revenue.
- (3) The mandate may deal with any other matter that the Minister and the Agency agree on.
- (4) The mandate must be reviewed every five years.
- (5) The mandate must be consistent with this Act.

## Governing Board

9. (1) The Board is responsible for governing the Agency.
- (2) The Board consists of –
  - (a) two executive members; and
  - (b) seven non-executive members, which must include –
    - (i) a member designated by the Minister responsible for Public Works, to serve until substituted by that Minister;
    - (ii) a member designated by the Minister responsible for Land Affairs, to serve until substituted by that Minister;
    - (iii) a member designated by the Minister responsible for Provincial and Local Government, to serve until substituted by that Minister;
  - (c) a Chairperson appointed by the Minister;
  - (d) a Deputy Chairperson appointed by the Minister.



- (3) The executive members may not be the Chairperson or Deputy Chairperson of the Board or members of any committee of the Board.
- (4) The Chairperson and Deputy Chairperson must be appointed by the Minister from the non-executive members of the Board.
- (5) The Board may designate any other non-executive member to act as chairperson if both the Chairperson and Deputy Chairperson are absent or unable to perform any function.

## Functions of Board

### 10. The Board –

- (a) must give effect to the mandate contemplated in section 8 and to the strategy of the Agency in order to achieve the objectives of the Agency;
- (b) is the accounting authority of the Agency;
- (c) takes decisions on behalf of the Agency and gives effect to those decisions;
- (d) provides guidance to the chief executive officer concerning the exercise of the functions of the Agency;
- (e) must notify the Minister immediately of any matter that may prevent or materially affect the achievement of the objects or financial targets of the Agency; and
- (f) must refer to the Minister any matter concerning the adverse functioning of the Agency.

## Persons disqualified from membership of Board

11. A person may not be appointed as or remain a member of the Board if that person –
  - (a) is an unrehabilitated insolvent or becomes insolvent and the

- insolvency results in the sequestration of that person's estate;
- (b) has been declared by a court to be mentally unfit;
  - (c) has been convicted, in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
  - (d) has been convicted of any other offence, whether in the Republic or elsewhere, committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine;
  - (e) has been, or is, removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
  - (f) is otherwise disqualified from serving as a member of a Board in terms of the Companies Act, 1973 (Act No. 61 of 1973); or
  - (g) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of the duties of a member of the Board.

## Appointment and removal of members of Board

- 12.** (1) For the appointment of non-executive members, other than those to be designated by any other Minister, the Minister must by notice in two newspapers and the Gazette invite all interested persons to submit, within the period and in the manner mentioned in the notice, the names of persons fit to be appointed as members of the Board.
- (2) The Minister must appoint a nomination committee to make recommendations to the Minister for the appointment of the non-executive members of the Board.



- (3) In establishing a nomination committee, the Minister must ensure that the committee is broadly representative of the various racial groups and geographic areas of the Republic and that both males and females are represented.
- (4) The nomination committee, in making a recommendation for appointment to the Board by the Minister, must consider –
- (a) the proven skills, knowledge and experience of a candidate in areas of –
    - (i) risk management;
    - (ii) financial management;
    - (iii) township planning;
    - (iv) project management;
    - (v) governance compliance;
    - (vi) transformation and diversity equity; or
    - (vii) land development, management, necessary for the efficient and effective performance of the Board's functions; and
  - (b) the need for representation of historically disadvantaged persons.
- (5) If a suitable person or the required number of suitable persons are not nominated as contemplated in subsection (4), the Minister may call for further nominations in the manner set out in subsection (1).
- (6) The Minister must appoint the non-executive members of the board and, by notice in the Gazette, within 30 days thereafter, publish the names of the members so appointed and the date of commencement of their terms of office.
- (7) A non-executive member of the Board –
- (a) holds office for a period not exceeding three years;
  - (b) may be reappointed but may not serve for more than two terms consecutively;

- (c) is appointed according to the terms and conditions determined by the Minister;
  - (d) must be paid from the revenue of the Agency such remuneration and allowances as may be determined by the Minister from time to time, taking into consideration regulations and guidelines issued by the Minister for the Public Service and Administration and the National Treasury;
  - (e) is appointed on a part-time basis.
- (8) If, after due process, it is found that a Board member has become disqualified from membership of the Board in terms of section 11, the Minister must remove the member from the Board by written notice to the member.
- (9) Any vacancy occurring on the Board in terms of section 13, must be filled in the same way as the departing member was appointed to the Board.

## Resignation, removal from office and vacancies

- 13.** (1) A member of the Board may resign by giving to the Minister –
- (a) one month's written notice; or
  - (b) less than one month's written notice, with the approval of the Minister.
- (2) A member of the Board designated in terms of section 9(2) (b)(i), (ii) and (iii) may resign by giving written notice jointly to the Minister and the relevant Minister who may appoint the member.
- (3) The Minister may remove a member of the Board if that member has –
- (a) become disqualified;
  - (b) acted contrary to this Act;



- (c) failed to disclose an interest or withdraw from a meeting as required; or
- (d) neglected to properly perform the functions of his or her office.

## **Fiduciary duty and disclosure**

- 14.** (1) A member of the Board must, upon appointment, submit to the Minister and the Board a written statement in which it is declared whether or not that member has any direct or indirect financial interest which could reasonably be expected to compromise the Board in the performance of its functions.
- (2) A member of the Board may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect financial interest.
- (3) If a member of the Board acquires an interest that could reasonably be expected to be an interest contemplated in this section, he or she must immediately in writing declare that fact to the Minister and the Board.
- (4) If an organisation or enterprise in which a member of the Board has an interest contemplated in this section is requested to offer its services to the Agency, or is in the process of concluding any agreement with the Agency, including an agreement in respect of the alienation of land to the Agency, the organisation or enterprise must immediately, in writing, declare the member's interest to the Minister and the Board.
- (5) A Board member must perform his or her functions of office and at all times exercise the utmost good faith, honesty and integrity, care and diligence in performing a member's functions, and in

- furtherance of this duty, without limiting its scope, must –
- (a) take reasonable steps to inform himself or herself about the Agency, its business and activities and the circumstances in which it operates;
  - (b) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions;
  - (c) regularly attend all meetings;
  - (d) exercise an active and independent discretion with respect to all matters to be decided by the Board;
  - (e) exercise due diligence in relation to the business of, and necessary preparation for and attendance at meetings of, the Board and any committee to which the Board member is appointed;
  - (f) comply with any internal code of conduct that the Agency may establish for Board members;
  - (g) not engage in any activity that may undermine the integrity of the Agency;
  - (h) not make improper use of their position as a member or of information acquired by virtue of his or her position as a member;
  - (i) treat any confidential matters relating to the Agency, obtained in the capacity as a Board member, as strictly confidential and not divulge them to anyone without the authority of the Agency or as required as part of that person's official functions as a member of the Board.
- (6) This section must be interpreted as adding to, and not deviating from, any law relating to the criminal or civil liability of a member



of a governing body, and criminal or civil proceedings that may be instituted in respect of such a liability.

- (7) A member who contravenes or fails to comply with these provisions is guilty of misconduct and commits an offence.

## Committees

- 15.** (1) The Board may from time to time appoint one or more committees.
- (2) The Board must –
- (a) assign members of the Board to serve on a committee, based on their knowledge and skills;
  - (b) determine the –
    - (i) terms of reference of a committee;
    - (ii) composition of a committee;
    - (iii) tenure of members on a committee;
    - (iv) reporting mechanisms of a committee; and
    - (v) method and reasons for removal of a member from a committee.
- (3) Non-executive members of the Board must make up the majority of the members of a Committee.
- (4) The Board may appoint specialists to a committee for their technical support.
- (5) Unless specially delegated by the Board a committee has no decision-making powers and can only make recommendations to the Board.
- (6) A committee must meet as often as is necessary in order to carry out its functions and may determine its own procedures.
- (7) Each committee must be chaired by a non-executive member of the Board.

## Delegation and assignment of functions by Board

- 16.** (1) The Board may, by a resolution passed by 75 per cent of its members –
- (a) delegate any of its powers and assign any of its duties to any member of the Board or any committee established in terms of section 15, the chief executive officer, the chief financial officer or any employee of the Agency; and
  - (b) amend or revoke such delegation or assignment.
- (2) Notwithstanding a delegation or assignment contemplated in subsection (1), the Board is not divested of any power or duly so delegated or assigned.
- (3) (a) Any delegation or assignment contemplated in subsection (1) –
- (i) may be made subject to such conditions as the Board may determine; and
  - (ii) must be communicated to the delegatee or assignee in writing.
- (b) The written communication contemplated in paragraph (a)(ii) must contain full particulars of the matters being delegated or assigned and of the conditions subject to which the power may be exercised or the duty must be performed.
- (4) The Board may not delegate –
- (a) the power to appoint the chief executive officer; and
  - (b) its role in deciding on –
    - (i) the appointment of the chief financial officer;
    - (ii) the mandate; and
    - (iii) the strategic plan of the Agency.



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## Appointment of chief executive officer and chief financial officer

- 17.** (1) The Board must, with the approval of the Minister, appoint a chief executive officer and a chief financial officer to ensure that the Agency meets its objects.
- (2) The Board must invite applications for the posts of chief executive officer and chief financial officer by publishing advertisements in the media.
- (3) A person appointed as chief executive officer or chief financial officer must –
- (a) have the qualifications or experience relevant to the functions of the Agency;
  - (b) have extensive knowledge of housing affairs; and
  - (c) not be disqualified as contemplated in section 11.

## Conditions of appointment of chief executive officer and chief financial officer

- 18.** (1) The appointment of the chief executive officer and chief financial officer is subject to the conclusion of an annual performance contract with the Agency.
- (2) The chief executive officer and the chief financial officer are appointed for a term of five years and may be reappointed for one additional term of five years.
- (3)(a) The chief executive officer holds office on terms and conditions determined by the Board, in consultation with the Minister of Finance and the Minister for the Public Service and Administration.

- (b) The chief financial officer holds office on terms and conditions determined by the chief executive officer within the limits determined by the Board, in consultation with the Minister of Finance and the Minister for the Public Service and Administration.
- (4) The chief executive officer and chief financial officer are executive members of the Board.
- (5) The chief executive officer and chief financial officer are entitled to a remuneration package determined by the Board in consultation with the Minister and the Minister of Finance.
- (6) The chief executive officer and the chief financial officer are accountable to the Board.

## **Vacating of and removal from office of chief executive officer and chief financial officer**

- 19.** (1) The Board must, in consultation with the Minister and subject to applicable labour legislation, remove the chief executive officer and chief financial officer from office –
- (a) for misconduct;
  - (b) for failing to perform the duties connected with that office diligently;
  - (c) if the chief executive officer or the chief financial officer becomes subject to any disqualification contemplated in section 11.
- (2) The chief executive officer and the chief financial officer may resign on written notice of at least 30 days to the chairperson.
- (3) The Board may suspend the chief executive officer or the chief financial officer during misconduct proceedings against him or her.



## Acting chief executive officer or chief financial officer

- 20.** (1) The Board may in writing appoint any senior employee of the Agency to act as chief executive officer or chief financial officer when the holder of that office –
- (a) is temporarily unable to perform the duties connected with that office; or
  - (b) has vacated or been removed from that office and a new chief executive officer or chief financial officer, as the case may be has not yet been appointed.
- (2) An acting chief executive officer or acting chief financial officer may exercise all the powers and must perform all the duties of the chief executive officer or chief financial officer, as the case may be.

## Functions of chief executive officer

- 21.** (1) The chief executive officer is head of the Agency's administration.
- (2) Subject to directives from the Board, the functions of the chief executive officer are to –
- (a) manage the affairs of the Agency;
  - (b) implement the policies and decisions of the Board;
  - (c) manage and recruit employees; and
  - (d) develop an efficient, transparent and cost-effective administrative systems.

## Functions of chief financial officer

- 22.** The functions of the chief financial officer include –
- (a) risk management of the Agency's projects;
  - (b) assisting the Board with regard to compliance with its duties in terms of the Public Finance Management Act;

- (c) ensuring that money payable to the Agency is properly collected;
- (d) ensuring that there is adequate control over the assets acquired, managed or controlled by the Agency;
- (e) ensuring that the liabilities incurred on behalf of the Agency are properly authorised;
- (f) ensuring efficiency and economy of operations and avoidance of fruitless and wasteful expenditure;
- (g) ensuring that the financial system is in line with generally accepted accounting practices and procedures;
- (h) ensuring an adequate budgeting and financial system; and
- (i) to provide sound financial control systems for the Agency.

## Delegation by chief executive officer and chief financial officer

- 23.** (1) The chief executive officer and the chief financial officer may delegate to an employee of the Agency any of his or her powers and assign any of his or her duties.
- (2) Any delegation contemplated in subsection (1) –
- (a) may be made subject to such conditions as the Board may determine;
  - (b) must be communicated to the delegatee in writing;
  - (c) may be amended or withdrawn in writing by the chief executive officer or chief financial officer, as the case may be; and
  - (d) does not prohibit the holder of the office that made the delegation from exercising that power or performing that duty.
- (3) Notwithstanding a delegation or assignment contemplated in subsection (1), the chief executive officer or the chief financial officer, as the case may be, is not divested of any power or duty so delegated or assigned.



## Staff of Agency

- 24.** (1) The Board must determine the staff establishment necessary to enable the Agency to perform its functions.
- (2) An employee is appointed subject to the terms and conditions determined by the chief executive officer in accordance with the policy and within the financial limits determined in accordance with a human resource policy approved by the Minister of Finance and the Minister for the Public Service and Administration, which may make provision for non-pensionable allowances for employees.
- (3) The chief executive officer must determine and supply each employee with a copy of the code of conduct, applicable to all members of staff of the Agency and justiciable for purposes of disciplinary proceedings, to ensure –
- (a) compliance with applicable law;
  - (b) the effective, efficient and economical use of the Agency's resources; and
  - (c) the promotion and maintenance of a high standard of professional ethics.
- (4) A person in the employ of the Agency becomes a member of the Government Employees' Pension Fund contemplated in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), and is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service.
- (5) Staff from public entities reporting to the Minister may be employed by the Agency subject to the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), and the human resource policy referred to in subsection (2).

- (6) Staff may also be transferred or seconded to the Agency from the public service subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the human resource policy referred to in subsection (2).

## Funds of Agency

- 25.** (1) The funds of the Agency consist of –
- (a) money appropriated by Parliament;
  - (b) donations or contributions received by the Agency with the approval of the Minister;
  - (c) interest on investments of the Agency;
  - (d) loans raised by the Agency, subject to section 26:
  - (e) proceeds from the sale of land;
  - (f) fees for services rendered based on cost recovery; and
  - (g) subsidies and grants granted by the organs of State.
- (2) The Agency, subject to section 26, must utilise the funds to defray expenses incurred by it in the performance of its functions.

## Application of Public Finance Management Act

- 26.** (1) The Agency is subject to the Public Finance Management Act and its financial management, preparation and submission of budgets, preparation of financial statements, audits and annual reports, and reporting must be done in accordance with the Public Finance Management Act.
- (2) The powers of the Agency must be exercised subject to the provisions of the Public Finance Management Act.



## Tabling in Parliament

- 27.** The Minister must table in Parliament the Agency's annual report –
- (a) within 14 days after receiving the report, if Parliament is in session; or
  - (b) if Parliament is not in session, within 14 days after the commencement of the next Parliamentary session.

## Delegation by Minister

- 28.** (1) The Minister may delegate to the Director-General any of his or her powers or assign any of his or her duties conferred or imposed on him or her by this Act.
- (2) Any delegation contemplated in subsection (1) –
- (a) may be made subject to such conditions as the Minister may determine;
  - (b) must be communicated to the delegatee in writing;
  - (c) may be amended or withdrawn by the Minister in writing; and
  - (d) does not prohibit the Minister from exercising that power or performing that duty.
- (3) The Minister may not delegate the power to –
- (a) make regulations; or
  - (b) appoint a member of the Board.
- (4)(a) The Minister may issue a directive to the Director-General regarding the delegation contemplated in subsection (1).
- (b) The Director-General must give effect to the directive contemplated in paragraph (a).

## Additional functions

- 29.** (1) The Minister may, in consultation with the Board, authorise the Agency to perform any additional function not inconsistent with this Act.
- (2) The authorisation contemplated in subsection (1) must be in writing, detailing the funding arrangements as well as the terms and conditions relating to the additional function.

## Provision of information by Agency

- 30.** (1)(a) Subject to Chapter 2 of the Constitution of the Republic of South Africa, 1996, the Minister may direct the Board to submit to him or her specific information.
- (b) The Board must comply within a directive contemplated in paragraph (a).
- (2) The Agency must provide the Minister or a person authorised by the Minister with access to such books, accounts, documents and assets of the Agency as the Minister may require.
- (3) The Minister may appoint a person to investigate the affairs or financial position of the Agency and compliance by the Agency with this Act and may recover from the Agency the fees and disbursements incurred by that person during the investigation.
- (4) An individual member of the Board and an employee of the Agency, if requested, must comply with subsections (1) and (2) to the extent that they are able to do so.

## Intervention by Minister

- 31.** (1) The Minister may direct the Agency to take any action specified by the Minister if the Agency –
- (a) is in financial difficulty or is being otherwise mismanaged;
- (b) is unable to perform its functions effectively due to dissension among Board members;



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- (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under this Act;
  - (d) has failed to comply with any law;
  - (e) has failed to comply with any directive given by the Minister under this Act; or
  - (f) has obstructed the Minister or a person authorised by the Minister in performing a function in terms of this Act.
- (2) A directive contemplated in subsection (1) must state –
- (a) the nature of the deficiency;
  - (b) the steps which must be taken to remedy the situation; and
  - (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.
- (3) If the Agency fails to remedy the situation within the stated period, the Minister may –
- (a) after having given the Agency a reasonable opportunity to be heard; and
  - (b) after having afforded the Agency a hearing on any submissions received, replace the members of the Board or, where circumstances so require, appoint a person as an administrator who shall take over the relevant function of the Agency until the members of the Board have been replaced.
- (4) If the Minister appoints an administrator to take over a function of the Agency in terms of subsection (3) –
- (a) the administrator may do anything which the Agency might otherwise be empowered or required to do by or under this Act, to the exclusion of the Agency;
  - (b) the Board may not, while the administrator is responsible for that function, exercise any of its powers or perform any of its duties relating to that function;
  - (c) an employee or a contractor of the Agency must comply with a directive given by administrator.

- (5) Once the Minister is satisfied that the Agency is once more able to perform its functions effectively, the Minister must terminate the appointment of the administrator.
- (6) The costs associated with the appointment of an administrator shall be for the account of the Agency.

## Regulations

- 32.** (1) The Minister must, after consultation with the Agency and Parliament make regulations regarding –
- (a) meetings to be held by the Board;
  - (b) regularity of meetings;
  - (c) special meetings;
  - (d) the taking of decisions at meetings;
  - (e) convening of meetings and notices of meetings;
  - (f) meetings by telephone or video conference or other means of communication;
  - (g) quorums at meetings;
  - (h) adjournment of meetings;
  - (i) the person presiding at meetings;
  - (j) minutes;
  - (k) resolutions signed by members of the Board;
  - (l) execution of documents; and
  - (m) the proceedings of the Board.
- (2) The Minister may, after consultation with the Agency and Parliament, make regulations regarding –
- (a) any matter that this Act requires or permits to be prescribed; and
  - (b) generally, any ancillary or incidental, administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.



## Dissolution

**33.** The Agency may not be placed under judicial management or liquidation except on the authority of an Act of Parliament.

## Security of information

**34.** A person may not disclose any information kept by the Agency except –

- (a) in terms of and subject to any law that compels or authorises the disclosure;
- (b) if it is necessary for the proper functioning of the Agency; or
- (c) if it is legally required for the purpose of monitoring, evaluating, investigating or considering any activity relating to the Agency.

## Documents relating to litigation

**35.** The Agency must provide the Minister with copies of all pleadings, affidavits and other documents in its possession relating to any legal proceedings brought by or against the Agency.

## Limitation of liability

**36.** Neither the Agency nor any employee of the Agency is liable for any damage or loss caused by –

- (a) the exercise of a power or the performance of a duty under this Act; or
- (b) the failure to exercise a power, or perform a duty under this Act, unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, grossly negligent or in bad faith.

## Offences and penalties

**37.** (1) It is an offence to –

- (a) fail to provide access to any book, accounts, documents or assets when required to do so under this Act;
  - (b) fail to comply with a directive issued under this Act;
  - (c) fail or refuse to give data or information, or give false or misleading data or information when required to give information under this Act;
  - (d) intentionally refuse to perform a duty or obstruct any person in the exercise of a power or performance of a duty in terms of this Act;
  - (e) accept any unauthorised fees or reward, either directly or indirectly as a result of a person's position with the Agency;
  - (f) use the Agency's name, logo or design without authority; or
  - (g) contravene or fail to comply with section 34.
- (2) Any person who contravenes subsection (1) and has been found guilty, is liable, on conviction, to a fine or imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
- (3) Where a person is convicted for a second or subsequent conviction for an offence contemplated in subsection (1), he or she is liable to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

## Short title and commencement

**38.** This Act is called the Housing Development Agency Act, 2008, and comes into effect on a date determined by the President by Proclamation in the Gazette.



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# The Housing Development Agency Regulations No. R. 610

The Minister of Human Settlements has under section 32 of the Housing Development Agency Act, 2008 (Act No. 23 of 2008), and after consultation with the Agency and Parliament, made the Regulations in the Schedule.

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# Chapter 1

## 1 Definitions

In these Regulations, any word or expression to which a meaning has been assigned in the Act has a meaning so assigned, and, unless the context indicates otherwise—

**“chairperson”** means the Chairperson of the Board referred to in section 9(2)(c) of the Act;

**“chief executive officer”** means the chief executive officer of the Housing Development Agency, referred to in section 17 of the Act;”

**“circumstances of priority”** means circumstances which relate to the housing conditions of people, particularly those in the low income groups of society, which give rise to priority to provide shelter or to upgrade areas or to re-develop precincts in a manner which requires accelerated methods for the delivery of housing at a large scale in an integrated and sustainable manner;

**“declare”** means final declaration of a priority housing development area by the Agency;

**“department”** means the national department of human settlements;

**“Division of Revenue Act”** means the Act of Parliament, as amended, which is enacted annually in terms of section 214 (1) of the Constitution;

**“Housing Act”** means the Housing Act, 1997 (Act No. 107 of 1997);

**“housing development”** means housing development as defined in section 1 of the Housing Act within a declared priority housing





development area and relating to circumstances of priority, which is of national importance and executed in accordance with an approved development plan;

**“housing institution”** means a national housing institution established by the Minister in terms of section 3(4)(h) of the Housing Act.

**“implementing agent”** means the entity, organ of state, or business enterprise responsible for the implementation of the priority housing development area plan as identified in terms of these regulations;

**“implementation protocol”** means an implementation protocol as defined in the Intergovernmental Relations Framework Act;

**“Intergovernmental Relations Framework Act”** means the Intergovernmental Relations Framework Act, 2005 (Act No.13 of 2005);

**“integrated development plan”** means the strategic plan for the development of the municipality adopted by the council of that municipality, as contemplated in the Municipal Systems Act;

**“Minmec”** means Minmec as defined in the Intergovernmental Relations Framework Act, 2005;

**“Medium Term Expenditure Framework”** means government strategic policy and expenditure framework which balances what is affordable against policy priorities of government;

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

**“participants”** means collectively, national and provincial departments, municipal authorities, housing institutions, applicable

organs of state and private partners;

**“preliminary declaration”** means a declaration by the Agency in consultation with the Minister, preceding the final declaration of a priority housing development area;

**“priority housing development plan”** means a development plan referred to in regulation 14;

**“protocol subscriber”** means a signatory to an implementation protocol as referred to in regulation 22;

**“spatial development framework”** means a spatial development framework as defined in the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);

**“the Act”** means the Housing Development Agency Act, 2008 (Act No. 23 of 2008).

## Chapter 2

# Proceedings and meetings of the Board

### Meetings of the Board

2. (1) The Board must hold at least four meetings a year.
- (2) Meetings of the Board must be held at the time and the place determined by the Board.
- (3) The Chairperson—
  - (a) may at any time convene a special meeting of the Board, and
  - (b) must convene such a meeting as may be requested by one third of the members of the Board, in writing.
- (4) The Chairperson may, from time to time, determine that a meeting be held by telephone, closed-circuit television or other means of communication.

### Notices of meetings

3. (1) Except as provided in sub-regulation (3), the Chairperson must give at least seven days' written notice to all members of the Board of any meeting convened at the request of one third of the members of Board.
- (2) The notice contemplated in sub-regulation (1) must—
  - (a) specify the date and time of the meeting; and
  - (b) state the general nature of the business of the meeting; and either
    - (i) state the place of the meeting; or
    - (ii) specify the means of communication by which the meeting will be held.
- (3) The Chairperson must give notice of a meeting—

- (a) in writing; and
  - (b) not less than seven days in advance except in cases of emergency or where all members of the Board agree to accept a short notice.
- (4) The Board must, if requested by a member of the Board, allow that member to participate in the meeting in the manner contemplated in regulation 9.
- (5) The proceedings of or resolutions passed at a meeting of the Board are not invalid merely because—
  - (a) the chief executive officer omitted to send a notice to a member of the Board; or
  - (b) a member did not receive a notice of the meeting.

## **Quorum**

- 4. (1) No business may be conducted at a meeting of the Board unless a quorum of members of the Board is present.
- (2) A quorum for a meeting of the Board is the majority of its members.
- (3) If a quorum is not present within 30 minutes of the time determined for a meeting of the Board, the person presiding at the meeting may adjourn the meeting to the same time and place, seven days after the adjournment.
- (4) If a quorum is not present at an adjourned meeting within 30 minutes of the time determined for such meeting, the meeting is automatically cancelled.

## **Adjournment**

- 5. (1) The person presiding at a meeting at which a quorum is present—
  - (a) may adjourn the meeting with the member's consent; and

- (b) must adjourn the meeting if the members so direct.
- (2) An adjourned meeting must be held at the time and place agreed to by the members before the meeting is adjourned.
- (3) Only unfinished business of an initial meeting can be conducted at an adjourned meeting.

### **Person presiding at meetings**

- 6. (1) Subject to sub- regulation (2)–
  - (a) the Chairperson must preside at all meetings of the Board at which the Chairperson is present; and
  - (b) in the absence of the Chairperson, the Deputy Chairperson must preside at a meeting of the Board.
- (2) If neither the Chairperson nor the Deputy Chairperson is present, the members present must appoint a member of the Board from amongst themselves to preside at the meeting, unless the Minister has appointed a Chairperson in terms of section 9(2)(c) of the Act.

### **Taking of decisions at meetings**

- 7. (1) A question arising at a meeting of the Board must be determined by the majority of votes of members of the Board present and voting.
- (2) If voting on a question is equal, the person presiding at a meeting has a casting vote in addition to his or her deliberative vote.

## **Minutes**

8. (1) The chief executive officer must ensure that complete and accurate minutes of each meeting are kept.
- (2) Draft minutes of each meeting must—
  - (a) be presented to the next meeting of the Board for amendment, if necessary, and adoption; and
  - (b) be recorded and entered in a book kept for that purpose.
- (3) The person presiding at the next meeting must sign and date an affirmation to the effect that the minutes of the previous meeting have been adopted by the members of the Board.
- (4) The Chairperson must provide the Minister with a summary of the minutes after every meeting of the Board.

## **Meetings by telephone or video conference or other means of communication**

9. (1) The Board may, by resolution, permit members of the Board to Participate in a particular meeting by telephone, video conference or other means of communication.
- (2) A member of the Board who participates in a meeting as contemplated in sub-regulation (1) must be regarded as being present at the meeting.

## **Resolutions signed by members of Board**

10. (1) Where the majority of the members of the Board sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms must be taken to have been passed at a meeting of the Board held on the day on which the document is

signed or, if the members do not sign the document on the same day, on the day on which the last member signs the document.

- (2) For the purpose of sub-regulation (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more members of the Board, must be taken to be one document.
- (3) A document referred to in this regulation may be in an acceptable electronic format.

### **Execution of documents**

- 11.** (1) A document is duly executed by the Board if it is executed on behalf of the Board by any two members of the Board.
- (2) The Board may, either generally or in a particular case or class of cases, by resolution authorise the chief executive officer to execute documents on behalf of the Board.

### **Proceedings of Board**

- 12.** (1) Subject to these regulations, the Board may regulate its own proceedings.



## Chapter 3

# Declaration of priority housing development area

### **Preliminary declaration of priority housing development area**

- 13.** (1) Based on the development priorities identified in the integrated development plan, the Agency will apply the identification criteria in sub-regulation
- (2) in order to prepare a Development Plan proposal for a preliminary declaration of a priority housing development area in consultation with the municipality.
- (2) The identification criteria contemplated in sub-regulation (1) in order to identify a priority housing development area must be whether the proposed area -
- (a) has a high demand for housing and related services within the area;
  - (b) is large enough to accommodate economic and social infrastructure and housing needs;
  - (c) supports sustainable environmental management and the integration of land uses and amenities;
  - (d) would grant reasonable access, or progressive realisation of such access, to bulk infrastructure, amenities, economic activities and transport; and
  - (e) is not situated within an area which -
    - (i) is zoned or used for purposes of forestry, mining, or similar activities;
    - (ii) poses an unreasonable environmental or health risk; or
    - (iii) is protected in terms of any law in order to preserve

biodiversity, the natural habitat, or any other purpose.

- (3) The municipality and the Agency must develop and finalise an implementation protocol that commits the municipality and the Agency to working together to develop a proposal for a preliminary declaration of a priority housing development area.
- (4) If the relevant municipality is a non-assigned municipality seeking priority housing development area declaration, the relevant provincial departments must be co-signatory to the implementation protocol.
- (5) A public consultation process, including the Agency, in respect of the proposal for preliminary declaration of a priority housing development area must be incorporated in the annual integrated development plan review process undertaken by the municipality in terms of the Local Government: Municipal Systems Act.
- (6) The Agency, in consultation with the municipality, must submit the proposal contemplated in sub-regulation (1) to the Minister for consideration.
- (7) After the approval by the Minister of a Development Plan proposal for preliminary declaration of priority housing development area, the Agency must make a preliminary declaration.
- (8) The proposal contemplated in sub-regulation (1) must contain at least the following:–
  - (a) a motivation and reasons in support of the preliminary declaration of a priority housing development area;
  - (b) details on the nature of the circumstances of priority in the

- municipality;
- (c) details of and evidence of alignment with the relevant integrated development plan and applicable spatial development frameworks;
  - (d) details on the nature of the land use and the land ownership;
  - (e) details and proof of inclusion of the consultative processes with the participants in the integrated development plan review process in terms of sub-regulation (5);
  - (f) the commitment by the relevant participants to assist the Agency in preparing the development plan, once a preliminary declaration of a priority housing development area has been made by the Agency;
  - (g) source of the funds required to prepare the priority housing development area plan;
  - (h) indicative budget allocations from all spheres of government and other relevant participants over the Medium Term Expenditure Framework;
  - (i) proposed time periods within which the development plan must be finalised; and
  - (j) a signed implementation protocol between the municipality and the Agency as per sub-regulation (3).

### **Actions to finalise Development Plan for priority housing development area**

- 14.** (1) The Agency, in consultation with the municipality, must finalise the development plan and obtain a council resolution supporting the development plan within 12 months of the date on which the Agency makes the preliminary declaration.

- (2) The development plan must at least contain the following information:–
- (a) the objectives and the prioritisation criteria of the priority housing development area;
  - (b) a motivation with regard to the priority for declaring the land or landed property as a priority housing development area;
  - (c) the name, delineated priority housing development area location, municipal and provincial domicile of the area to be declared a priority housing development area, which shall not differ significantly from the area described in the preliminary declaration;
  - (d) the nature of the land use and the land ownership;
  - (e) details and evidence of alignment with the relevant spatial planning frameworks, national development priorities, applicable provincial and municipal spatial development frameworks, and integrated development plans and land use schemes;
  - (f) the type of development to be implemented within the priority housing development area;
  - (g) roles and responsibilities of the required participants;
  - (h) details of the community to be affected, either directly or indirectly, by the declaration of a priority housing development area;
  - (i) all technical and feasibility studies that have been carried out on the land, or results to be obtained relevant to the implementation process and procedures of the priority housing development area;
  - (j) a description of how existing projects in the area will be integrated into the development plan for the area;
  - (k) budget allocations from all spheres of government and other relevant participants over the Medium Term indicative

Expenditure Framework;

- (l) an indication of the intended implementing agent;
- (m) the implementation, governance and oversight structures;
- (n) risk mitigation management provisions and structures;
- (o) the reporting mechanisms;
- (p) the anticipated planning and development approvals and related arrangements regarding the implementation and finalisation of the priority housing development area;
- (q) compliance with applicable governmental policy and legislation, including spatial planning and land use management legislation, and other relevant provincial and municipal policies and legislation;
- (r) a closure strategy in accordance with regulation 27;
- (s) an indication of the person -
  - (i) responsible for acting as the duly authorised representative of the participants;
  - (ii) who will be vested with the necessary authority to bind the participants in terms of decisions which has to be taken, save where the principal of the authorised representative has directed differently;
  - (iii) who will be the party with whom the implementing agent will liaise and correspond; and
  - (iii) who must inform the implementing agent of any changes with regard to the authorised representation and the position of the representative;
- (t) any other details which the Agency may require to be included in the priority housing development plan.

## **Consultation Process**

- (1) In finalising the priority housing development plan, the Agency

must, in consultation with the municipality:—

- (a) consult with the community, participants, the owner of the land, any authorities having jurisdiction over the affected area, and other parties who have a legally recognised interest in the land, and will be impacted by the declaration of a priority housing development area;
- (b) retain the records of the consultative process contemplated in regulation 15(1)(a) which must include any written comments received from the consulted parties; and
- (c) record and retain any objection expressed in the consultation process as contemplated in regulation 15(1)(a).

(2) The consultation process referred to in regulation 15(1)(a) must ensure that:—

- (a) notice to consult-
  - (i) is displayed at the municipality's offices;
  - (ii) provides the community with at least seven-days' prior notice of the place, date and time at which the consultative meeting is to take place;
  - (iii) informs the community that a copy of the preliminary development plan is open for inspection at a specified office within the municipal offices or available for download on the municipality's official website;
  - (iv) includes any other details of the meeting which the municipality deems necessary;
- (b) the information contained in the notice is, as far as reasonably possible, in at least three of the official languages, including English and the predominantly spoken language in the municipal jurisdiction;
- (c) advertisements are placed in the media in accordance with

*section 21 of the Local Government: Municipal Systems Act informing the community that a consultation meeting will be held on a specific date (which must be not less than seven but not more than fourteen days after the date of the advertisement), time and place and other details which in the reasonable opinion of the municipality may be necessary;*

- (d) any notice regarding the proposed development plan is of such a nature that it can be understood by affected parties;
- (e) during the consultation meeting -
  - (i) a register is kept of all attendees;
  - (ii) the consultative process is conducted in a language understood by the broader community;
  - (iii) the community is aware of the right to object and provide written comments, within 30 days of the consultation meeting on the proposed development plan; and
  - (iv) to the extent that submissions require interpretation either because of the language in which the consultative process is being conducted adequate interpretation methods must be provided;
- (f) the municipality retains and stores for record purposes -
  - (i) the minutes of the consultative processes;
  - (ii) comments received; and
  - (iii) a record of how comments were dealt with;
- (g) the municipality provides the Agency with any information that may be requested by the Agency for purposes of submitting the proposed development plan to the Minister.

- (3) The Agency must consult with the Minister regarding the finalisation of the development plan in respect of the following:–

- (a) progress achieved in financing the development plan;
  - (b) obstacles experienced by the Agency and attempts made by the Agency to resolve such obstacles;
  - (c) matters which require urgent assistance or intervention by the Minister;
  - (d) delays experienced and extension of time required by the Agency to finalise the development plan;
  - (e) changes in circumstances which require the contents of the development plan to be changed;
  - (f) any participant who refuses or fails to cooperate with the Agency in preparing the development plan; and
  - (g) any other aspects which the Agency deems necessary to refer to the Minister.
- (4) Before consulting with the Minister in terms of regulation 3(f) the Agency must in writing, request written reasons for the participant's refusal to cooperate.
- (5) The Agency, in consultation with municipality, must submit the development plan to the Minister for consideration and approval.
- (6) The Minister must, in consultation with MinMec and the relevant authorities in the provinces and municipalities approve the development plan within 90 days.
- (7) The development plan must be kept and filed by the Agency for record purposes.

### **Declaration of priority housing development area**

- 16.** (1) Prior to a priority housing development area being declared



- by the Agency, the Agency must ensure that—
- (a) all legal requirements applicable to the Agency in respect of the declaration of a priority housing development area have been complied with; and
  - (b) the priority housing development area conforms to the integrated development plans, spatial development frameworks and land use schemes applicable at the time in the proposed priority housing development area.
- (2) After the approval of the development plan by the Minister, the Agency must declare a priority housing development area.
- (3) The declaration contemplated in sub-regulation (2) must be published by the Agency by notice in the Government Gazette which notice must contain at least the following information -
- (a) the objectives sought to be achieved in the declaration of a priority housing development area;
  - (b) a cadastral description to identify the location of the priority housing development area; and
  - (c) the name by which the priority housing development area will be known or identified.
- (4) The declaration of a priority housing development area will initiate the process for the commencement of a housing development, which must be regarded as a national housing programme as defined in section 1 of the Housing Act.

## **Amendment or withdrawal of development plan**

- 17.** (1) Any amendment effected to a development plan must be done by way of an addendum to the original approved development plan for record purposes.
- (2) The Agency must fully motivate any amendment or withdrawal of a development plan and must give reasons to the Minister when applying for the Minister's approval.



## Chapter 4

# Implementation of priority housing development area

### Implementation in accordance to the development plan

- 18.** (1) A housing development will be implemented in accordance with the approved development plan.
- (2) The implementation of a priority housing development requires from the Agency and all relevant participants to meet their obligations, responsibilities and duties during and after implementation.
- (3) The Agency may from time to time identify circumstances which may cause delays on the progress of the development and take remedial steps to combat those delays.

### Implementing agent

- 19.** (1) The municipality in cooperation with the Agency may appoint an implementing agent on terms and conditions agreed to between the parties. The intended implementing agent being either-
- (i) the Agency or an external service provider appointed by the Agency with the approval of the municipality;
  - (ii) the municipality or an external service provider appointed by the municipality with the approval of the Agency; or
  - (iii) a public or municipal entity as agreed to by the Agency and the municipality;
- (2) Depending on the nature of the development, more than one implementing agent may be appointed.

- (3) The implementing agent may not cede or assign any of its rights, functions or obligations to a third party without the written consent and approval of the Agency.

### **Committees and support structures**

20. (1) The Agency may, in consultation with the Municipality, for purposes of functionality and management of the priority housing development area, establish one or more forums and committees on which representatives of the Agency and identified participants must serve.
- (2) The forums and committees contemplated in sub regulation 1 must include community representatives.
- (3) The municipality in cooperation with the Agency may, in order to accommodate the priority housing development area as a national housing programme, require the participants of the priority housing development area plan to prioritise assistance to the Agency in the implementation of the housing development, which may include–
  - (a) attending meetings;
  - (b) adopting special resolutions;
  - (c) taking the necessary actions in accordance with the priority housing development area plan ; and
  - (d) prioritising budgets in accordance with the indicative allocations set out in the priority housing development area plan by the participants.

### **Monitoring of priority housing development area**

21. (1) The Agency must monitor the implementation of the priority

housing development area plan.

- (2) The Agency must monitor the performance of-
  - (a) the implementing agent, if the Agency is not the implementing agent; and
  - (b) the signatories of the priority housing development area plan.
- (3) The Agency in consultation with the implementing agent must periodically report on progress and risks and indicate remedial steps.
- (4) The Minister must monitor the performance of the Agency in instances where the Agency is the implementing agent.
- (5) If the implementing Agent fails to fulfil its roles or obligations, the Municipality may terminate the appointment and replace it with another implementing agent.

## Chapter 5

# Intergovernmental and institutional collaboration

### Implementation Protocol for housing development

22. (1) The Agency must develop an implementation protocol to be concluded by respective organs of state, at national, provincial and local government levels, and other housing institutions in accordance with section 35 of the Intergovernmental Relations Framework Act and where applicable enter into a separate agreement with the private sector, to provide mechanisms and procedures of facilitating, assisting, supporting and funding the planning and implementation of the priority housing development area.
- (2) The implementation protocol will determine the terms and conditions of each protocol subscriber.
- (3) It will be the duty of the Agency to effect changes or amendments to the implementation protocol, as approved by the Minister, which must at all times align to the priority housing development plan.
- (4) The implementation protocol must indicate a contact person –
- (a) who will act as the duly authorised representative of the protocol subscriber;
  - (b) who will be vested with the necessary authority to bind the protocol subscriber in terms of decisions which have to be taken, save where the principal of the authorised representative has directed differently;
  - (c) who will be the party with whom the Agency will liaise and correspond with; and

- (d) must inform the Agency of any changes in regards to the authorised representation and the position of the representative.

### **Priority housing development area participant agreements**

- 23.** (1) The Agency in cooperation with the municipality may, where applicable, enter into a separate agreement with any person or entity in order to provide mechanisms and procedures of facilitating, assisting, supporting and funding the planning and implementation of the priority housing development area plan.
- (2) Amendments to the implementation protocol must be agreed to in writing by all signatories.



## Chapter 6

### Funding of priority housing development area

#### Recognition of priority housing development area programme

24. (1) The Agency must:—

- (a) compile and submit a programme plan to the Minister in order to recognise the priority housing development area as a dedicated national housing programme in accordance with the Housing Act; and
- (b) submit budget plans reflecting the financial requirements for the declared priority housing development areas over the Medium Term Expenditure Framework.

#### Funding of implementation of priority housing development area plan

25. (1) The department will allocate a portion of the Human Settlements Development Grant allocated in terms of the Division of Revenue Act, for the implementation of the development plan and facilitate the allocation of other relevant grants.

- (2) A defined amount must be made available by the relevant member of the executive council in a particular province from the provincial allocation in terms of the annual housing vote allocation by the Minister of Finance in terms of the Division of Revenue Act.

- (3) In the case of an assigned municipality, a defined amount

must be made available by the municipality from the municipal allocation in terms of the annual housing vote allocation by the Minister of *Finance in terms of the Division of Revenue Act*.

- (4) The funding contemplated in sub-regulations (1) and (2) must cover funds for capital and operational budget requirements.
- (5) Funding commitments and the sequence of release must be stipulated by each party in the development plan in accordance with regulation 14(2) (k).

### **Essential elements of cooperation**

- 26.** (1) The Agency will at all times be entitled to rely upon the full cooperation and support of other organs of state to achieve the planning, implementation and funding of the priority housing development area in a manner contemplated in terms of the Intergovernmental Relations Framework Act, and in this regard every signatory and protocol subscribers will be deemed to have –
- (a) committed to expedite and fast-track the subscriber's functions and duties; and
  - (b) guaranteed performance in terms of any financial undertaking or commitment given by that subscriber to the Agency.
- (2) The Agency may at any time request from a protocol subscriber and be entitled to receive from that subscriber an undertaking reaffirming the subscriber's financial commitment, upon which document the Agency will be

- entitled to rely, for purposes of planning and implementing the housing development as a whole or in any phase thereof.
- (3) Unless the Agency had in writing agreed to release or conditionally release a protocol subscriber from any financial commitment or any other commitment, in terms of the implementation protocol, such subscriber may not cancel, withdraw or in any way fail to perform in terms of the commitment given, which will, if the protocol subscriber had acted contrary to their agreed functions and duties, such contrary action will constitute a breach of contract.
  - (4) If a person contravenes any of these regulations, such contravention will be dealt with in terms of section 37 of the Act.

### **Closure of a housing development**

- 27.** (1) The development plan contemplated in regulation 25 must provide for a closing down strategy.
- (2) The closing down strategy, contemplated in sub-regulation (1), must address at least the following-
- (a) the continuation or non-continuation of the Agency's participation in the development;
  - (b) the handing over procedures of identified responsibilities, authorities, functions and, where applicable, assets including buildings and services from one party to another, which relate to the housing development and the future management, ownership and control of the housing development after the closing down strategy event;
  - (c) the financial implications regarding the closing down or handing over of the development, as contemplated

- in sub-regulation (2)(b) and the impact which such handing over process will have on the Agency, or the party taking over the respective roles, functions, duties and assets; and
- (d) any other aspect or circumstances required to be addressed

# Chapter 7

## General

### Short title

28. These Regulations are called the Housing Development Agency Regulations.





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