

(Bungoma County Legislative Supplement No. 1)

LEGAL NOTICE NO. 1

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 116 of the Public Finance Management Act, 2012, the Bungoma County Executive Committee Member for Finance and Economic Planning makes the following Regulations:—

THE PUBLIC FINANCE MANAGEMENT (BUNGOMA COUNTY ASSEMBLY) (EMPLOYEES' MORTGAGE SCHEME FUND) REGULATIONS, 2018

PART I—PRELIMINARY PROVISIONS

1. These Regulations may be cited as the Bungoma County Assembly (Employees' Mortgage Scheme Fund) Regulations, 2018. Citation.

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

“borrower” means a person in receipt of a loan out of the Fund;

“board” means the Bungoma County Assembly Service Board contemplated under section 12 of the County Governments Act No.17 of 2012;

“county assembly” means the County Assembly of Bungoma.

“committee” means the Loans Management Committee established under regulation 6;

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

“fund” means the Bungoma County Assembly (Employees' Mortgage Scheme Fund) established under regulation 3;

“member of the scheme” means an employee of the County Assembly of Bungoma who is employed on permanent and pensionable terms.

“officer administering the fund” means the Clerk of the County Assembly;

“property” means a residential house purchased through a loan from the Fund and includes the land purchased under a loan from the Fund on which such house is to be developed;

“SRC” means the Salaries and Remuneration Commission established under Article 230 of the constitution of Kenya, 2010;

“valuer” means a person registered as a valuer under the Valuers Act.

#### PART II—ESTABLISHMENT OF THE FUND

3. There is established a Fund to be known as the Bungoma County Assembly Employees’ Mortgage Scheme Fund.

Establishment of the Fund.

4. The object and purposes of the Fund is to—

Object and purpose of the Fund.

- (a) provide a loan scheme for the purchase, development, renovation or repair of residential houses to members of the scheme;
- (b) raise funds for the implementation of the objectives contemplated in paragraph (a) above.

5. (1) The initial capital of the Fund shall consist of the monies appropriated by the County Assembly pursuant to the Salaries and Remuneration Commission Circular.

Capital of the Fund.

(2) The County Assembly may appropriate additional monies to the Fund;

(3) The Fund shall be administered as a special account in the County Assembly (Employees’ Mortgage Scheme Fund) and shall be operated by the officer administering the Fund;

(4) The interest accruing to the Fund shall, where such interest constitutes a surplus after meeting the requirements of regulation 19(1)(b) be credited to the capital of the Fund.

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

The Loans Management Committee.

- (a) one elected Member of the County Assembly Service Board nominated by the board who shall be the Chairperson of the committee;
- (b) the Deputy Clerk of the County Assembly who shall be the Vice – Chairperson of the committee;
- (c) the officer heading the Finance Department;
- (d) the officer heading the Legal Department;
- (e) the officer in-charge of Legislative and Procedural Department;
- (f) the Head of Human Resource Department;
- (g) one senior administrative officer.

(2) The officer administering the Fund shall be an *ex-officio* member of the committee and the secretary to the committee.

(3) The committee shall administer the Fund and shall—

- (a) process applications for loans in accordance with the existing terms and conditions of borrowing;
- (b) liaise with a financial institution (if any) for the purpose of loan disbursement; and
- (c) establish a secretariat to supervise the day-to-day running of the Fund.

(4) The meetings of the committee shall be convened by the Chairperson, in the absence of the Chairperson, the Vice-Chairperson, and in the absence of the Vice-Chairperson, by a member designated by the Chairperson and shall be convened at such times as may be necessary for the discharge of the committee's functions.

(5) The quorum for a meeting of the committee shall be the Chairperson and at least three other members.

7. Notwithstanding regulation 6(3), the committee may, if it considers it appropriate to do so, appoint a mortgage institution to administer the Fund on its behalf.

8. (1) A member of the Scheme who wishes to apply for a loan from the Fund shall make such application to the officer administering the Fund in such manner as the Loans Management Committee may prescribe;

Disbursement of loans for development.

(2) A loan obtained under these Regulations shall be utilized for the purchase, development, renovation or repair of residential property for the occupation of the applicant and his or her immediate family;

(3) The amount of the first installment granted for the purchase of land under paragraph (2) shall not exceed forty per cent of the maximum loan amount for which the member of the Scheme is eligible.

9. (1) A loan granted for the development of a residential property under these Regulations shall be released to the applicant in the following phases—

Utilization of loan monies.

- (a) the first disbursement based on the value of the land on which the residential property is proposed to be developed; and
- (b) the subsequent disbursements based on the rate of completion of the various phases of development as certified by a qualified valuer at the cost of the applicant;
- (c) the committee and the officer administering the Fund may authorize offsetting of the existing loan subject to the amount of outstanding loan, age and capacity of the applicant, and this should be on limited scale.

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

Application for a loan.

- (a) copies of the designs of the proposed residential property duly approved by the relevant Government agency;
- (b) bills of quantities in respect of the proposed development, renovation or repair;
- (c) an official search of the title to the property intended to be purchased;
- (d) a certified copy of the sale agreement relating to the property.

(2) The applicant shall bear the cost of stamp duty and other legal fees.

(3) All legal transactions in respect of the property being purchased shall be conducted by an advocate.

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

Leasehold property.

12. The maximum loan entitlement for a member of the Scheme shall be in respect of the designation, job group or scale as set out in the schedule to these Regulations and in accordance with the Salaries and Remuneration Commission circular.

Maximum loan disbursement.

13. For a member of the Scheme to qualify for a loan, such a member shall be required to be confirmed in appointment

Eligibility.

14. A loan granted under these Regulations shall be repayable within a period of twenty years or the remaining period of service of the borrower, whichever is less.

Repayment of loan.

15. (1) The interest chargeable on a loan shall be three per centum per annum on a monthly reducing balance and this rate may be revised from time to time as advised by the Salaries and Remuneration Commission and subject to advisories from relevant constitutional bodies.

Interest on loans.

(2) Any member of the scheme shall, continue to pay interest at the rate of three per centum per annum even after leaving public service employment for the life of the loan except upon default, where the interest rate shall immediately be converted into commercial rates, provided that any member who leaves the employment on disciplinary grounds shall have the interest rates converted into commercial interest immediately upon leaving employment for such disciplinary grounds.

16. (1) The committee shall have a charge registered on the property financed through a loan granted under these Regulations and shall be entitled to have its name entered in all documents of title for such property. Lien.

(2) The borrower shall—

- (a) not mortgage, charge, surrender the lease or sell or agree to sell or part with possession of the charged property or any part thereof without the prior written consent of the committee;
- (b) meet and pay all rates, rents, insurances and any other outgoings in respect of the property and send the proof of such payments to the committee; and
- (c) provide a transfer deed duly signed by the borrower and a letter authorizing the committee to sell the property in case of default in payment.

(3) All residential properties purchased through the Fund shall be constructed of such material as may be acceptable to the committee.

(4) During the loan repayment period, every borrower shall—

- (a) ensure that the property is used for residential purposes only;
- (b) maintain the property in a satisfactory state of repair; and
- (c) not alter or make any structural alterations to the property, carry out any valuation, assessment or investigation relating to the property or title thereto, as the case may be, without the approval of the committee.

(5) No borrower shall be eligible for more than one loan at a time or more than a total of two loans from the Fund.

17. (1) A borrower shall take out and maintain a mortgage protection policy and a fire policy with a reputable insurance firm and the cost shall be borne by the borrower. Mortgage Insurance.

(2) The originals of all documents relating to property financed by a loan from the Fund shall be kept in safe custody by the officer administering the Fund.

18. The committee may call in a loan in default, sell the charged property by public auction or private treaty where the borrower is in breach of the terms under the loan agreement or the covenant contained in the charge of the mortgage instrument, further, the committee shall freeze all the borrower's emoluments towards liquidation of the loan. Default in repayment.

19. (1) The officer administering the Fund shall—

Administration of the Fund.

- (a) supervise and control the administration of the Fund;
- (b) utilize the interest accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirements concerning such use in consultation with the committee;
- (c) cause to be kept books of accounts and other books and records in relation to the Fund and for all loans financed from the Fund;
- (d) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund, prepared and signed by him specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the committee may from time to time direct in accordance with the Public Finance Management Act;
- (e) furnish such additional information as may be required for the purpose of examination and audit by the Auditor-General in consultation with the committee and;
- (f) designate and appoint such staff as may be necessary to assist him in the administration of the Fund and may require such staff to carry out such inspections as may be necessary to verify any information submitted under these Regulations.

(2) Every statement of accounts prepared under these Regulations shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

20. The responsibilities of the mortgage institution, if any, appointed under these Regulations shall be—

Responsibilities of mortgage institution..

- (a) to operate individual accounts for each borrower, which shall provide details of recoveries of the loan;
- (b) to charge security on properties acquired through loans from the Fund, to protect the interest of the Fund and act as the custodian of such charges;
- (c) to disburse cheques for newly approved loans to various vendors, after the necessary documentation is completed by the committee;
- (d) to pay all outgoings and issue demand notices where necessary to members through the officer administering the Fund;

- (e) upon repayment of the loan, interest and other expenses which may be outstanding, to discharge the charge and release the security documents to the borrower; and
- (f) upon default, to call in the loan and on behalf of the committee sell the charged property by public auction or private treaty, in which event the Fund shall meet any shortfall between the loan outstanding and the proceeds of sale.

21. The committee may issue guidelines on such other matters as may be necessary for the proper management and administration of the Fund. Supplementary terms.

100,000			
200,000			
300,000			
400,000			
500,000			
600,000			
700,000			
800,000			
900,000			
1,000,000			

**SCHEDULE (R. 12)****MAXIMUM LOAN ENTITLEMENT FOR MEMBERS OF THE SCHEME**

Designation/Job Group/ Scale /Maximum entitlement

<i>Job Group</i>	<i>Equivalent Salary Scale</i>	<i>Maximum Entitlement</i>
S	12	20,000,000
R	11	15,000,000
Q	10	15,000,000
P	9	15,000,000
N	8	10,000,000
M	7	10,000,000
L	6	10,000,000
K	5	10,000,000
J	4	6,000,000
H	3	6,000,000
G	2	6,000,000
F	1	4,000,000

Made on the 14th March, 2018.

ESTHER N. WAMALWA,

*County Executive Committee Member for Finance and Economic Planning.*