

# KWAZULU-NATAL HOUSING AMENDMENT ACT, 2000

ACT NO. 8 OF 2000

Assented to on 2000-10-04

## GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

## ACT

To amend the KwaZulu-Natal Housing Act, 1998, so as to further define certain expressions; to lay down applicable general principles; to set out powers and duties of the Minister of Housing; to abolish the KwaZulu-Natal Housing Development Board; to dispose of its assets by transferring them to the Department of Housing; *to provide for the establishment and appointment of a panel of experts; to provide for the determination of procurement policy in respect of housing development;* to provide for consultation; *to provide for the regulation of the sale of state funded housing;* to provide for expropriation of land required for housing development; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Province of KwaZulu-Natal, as follows:

Substitution of heading to Chapter 1 of Act No. 12 of 1998

1. The heading to Chapter I is hereby substituted by the following heading:

## INTERPRETATION, APPLICATION, PURPOSE AND THE PRINCIPLES OF THE ACT

Amendment of section 1 of Act No. 12 of 1998

2. Section 1 of the KwaZulu-Natal Housing Act, 1998 (hereinafter referred to as the principal Act), is hereby amended

(a) by the deletion of the definition of the word "Board";

(b) by the substitution for the definition of "Executive Council" of the following definition:

"Cabinet" **Executive Council** means the Executive Council of

the KwaZulu-Natal Provincial Legislature contemplated in section 132 of the Constitution; and

- (c) by the deletion of the definition of the *word "Secretary"*;  
by *the* following definition:

"Deputy Director-General" means the officer appointed as head of the department in terms of the laws governing the Public Service and includes an acting and temporary appointment.

Insertion of section 2A and 2B in Act No. 12 of 1998

3. The following sections are hereby inserted in the principal Act after section 2:

Application of the Act

2A. This Act *applies* **shall subject to the provisions of the Housing Act apply** throughout the Province, *subject to the provisions of the Housing Act*.

Principles Underpinning Housing Development in the Province

2B. (1) The Minister *must* **shall**, after consultation with the provincial organisation representing municipalities contemplated in section 163(a) of the Constitution, do everything in his or her power to promote and facilitate the provision of housing in the Province within the framework of national policy on housing development.

(2) *The Minister must inform the Portfolio Committee of any action taken in terms of subsection (1).*

(3) **(2)** For the purposes of subsection (1), the Minister *must* **shall-**

(a) determine **the** provincial policy in respect of housing development that-

- (i) upholds the principles referred to in or prescribed under section 2 of the Housing Act *;,and*
- (ii) *complies* **comply** with the provisions of the code referred to in section 4 of the Housing Act;

(b) promote the adoption of any legislation to ensure effective housing delivery;

- (c) support and strengthen the capacity of municipalities effectively to perform their duties and responsibilities in respect of housing development;
- (d) co-ordinate housing and related activities in the Province;
- (e) carry out housing duties and responsibilities of local government in terms of this Act whenever a municipality is not able to do so itself; and
- (f) prepare a multi-year plan in respect of the execution of national and provincial housing programmes in the Province in accordance with guidelines that the national Minister may approve for the financing of such a plan with money from the Fund."

Repeal of Chapter II of Act No. 12 of 1998

- 4. Chapter II of the principal Act is repealed.

Insertion of section 12A in Act No. 12 of 1998

- 5. The following section is hereby inserted in the principal Act after section 12:

Transfer of the assets of the **Provincial Housing Development Board** to the **KwaZulu-Natal Housing Department**

12A. The assets, liabilities, rights and obligations of the **Provincial Housing Development Board repealed by this amendment Act** are hereby transferred to the *department* **KwaZulu-Natal Department of Housing** for the purpose of implementing section 14 and section 15 of the Housing Act.

Amendment of Section 15 of Act No. 12 of 1998

- 6. Section 15 of the principal Act is hereby amended-

- (a) by the deletion in *subsection* (1) of paragraph (a); and
- (b) by the substitution in *subsection* (3) for paragraph (d) of the following paragraph:

"(d) carry out housing duties and responsibilities of a municipality in terms of this Act whenever such municipality itself is unable to do so or where no municipality exists. "

Insertion of sections 15A, 15B, 15C, 15D, **and** 15E, 15F and 15G in Act No. 12 of 1998

7. The following sections are hereby inserted in the principal Act after section 15:

General powers and duties of Minister

15A. In addition to the powers assigned to *the* Minister by this Act or other legislation, the Minister *must shall*-

(1)(a) administer all national and provincial housing programmes through the approval of projects and the financing thereof from the **funds within the Provincial Housing Development Fund**;

(2)(b) determine housing development priorities in the *Province* **province**;

(3)(e) institute a process to enable the *department* **provincial housing departments** to evaluate and access project applications to ensure a healthy balance between the priorities and needs of all stakeholders, development priorities and technical expertise;

(4)(d) carry out the duties and responsibilities and exercise any power of the provincial government referred to in section 7 of the Housing Act;

(5)(e) establish norms, standards, frameworks and provincial policies which are not inconsistent with the Housing Act, in order to deal effectively with matters pertaining to housing development that require to be dealt with uniformly across the Province;

(6)(f) present the National Minister of Housing with provincial motivations for fund allocations from the South African Housing Fund to the **KwaZulu-Natal Housing** Fund for the purpose of funding national housing programmes in the Province;

(7)(h) report to Parliament on progress *concerning in* **the Province with** housing programmes *in the Province*, the activities of accredited municipalities and the transactions of the **KwaZulu-Natal Housing** Fund, and present to *Parliament* **the Provincial Legislature** the annual statements and balance sheet of the **KwaZulu-Natal Housing** Fund, the report concerned to be made within 90 days after 31 December of each year *if Parliament is in session*, or if Parliament **the Provincial Legislature** is not then in session,

within 14 days after the commencement of the **Provincial Legislature's** next session;

(8)(i) accredit any municipality which may apply for accreditation: Provided that the municipality concerned satisfies the accreditation criteria as agreed between the Minister and the National Minister of Housing;

(9)(j) allocate moneys from the **KwaZulu-Natal Housing Fund** to any accredited municipality: Provided that the municipality concerned maintains a separate account for the administration of national housing programmes;

(10)(k) establish targets in respect of housing delivery in the Province;

(11)(l) encourage and develop new ways of reducing the cost of housing developments and diversifying the type of design and layout used in provincial projects;

(12)(m) establish a mechanism in the **provincial housing** department to administer provincial housing assets; and

**(n) appoint a panel of experts to advise him on request on any matter relating to housing development in the Province.**

(13) *determine a procurement policy which is consistent with section 217 of the Constitution in relation to housing development.*

*Establishment of Panel*

15B (1) *The Minister may establish a panel of persons to advise him or her on any matter relating to housing development.*

(2) *The panel shall consist of one or more fit and proper persons who have knowledge, qualifications or experience in the field of housing development.*

(3) *Members of the panel must be appointed in accordance with procurement policy that is consistent with section 217 of the Constitution.*

(4) *The Minister must, prior to appointment of the panel-*

*(a) through the media, and by notice in the Provincial Gazette invite nominations of persons as candidates for respective positions on the*

*panel; and*

*(b) advise the Portfolio Committee of the proposed appointment.*

*(5) A member of the panel is subject to subsection (6) appointed for the period determined by the Minister at his or her appointment, and may, subject to subsection (3), be reappointed on the termination of such period.*

*(6) The Minister may at any time terminate the membership of a member of the panel for reasons which are just and fair.*

#### Enhancing public participation

**15C15B** (1) The Minister may convene a participation forum and call for annual meetings to promote consultation and information sharing between the Provincial Government and all major stakeholders in civil society and local government with regard to the Provincial Government's policy, legislative role and funding role in regard to housing in the Province.

(2) The objects and purposes of the participation forum are: **as follows-**

- (a) to ensure that policy, legislation and fund allocation with regard to housing development are consistent with the general principles applicable to housing development;
- (b) to ensure transparency, accountability and equity in the administration of housing development;
- (c) to promote the participation of all relevant stakeholders in the housing development process; and
- (d) to create an environment in which all role players can meet their respective obligations.

(3) The Minister serves as the chairperson of the participation forum and meetings must take place at such times and places as the Minister may determine.

(4) More than fifty per cent (50%) of the members of the participation forum comprise a quorum.

#### Delegation of powers and assignment of duties

15D15C (1) The Minister may, subject to the conditions as he or she may determine-

- (a) delegate a power conferred upon him or her under this Act except the power to make regulations, *to the Deputy Director-General*; and
- (b) assign any of his or her duties in terms of this Act, to the *Deputy Director-General* **head of department** *who may in turn assign the duty to* **or** a person employed by the department.

(2) The *Deputy Director-General* **head of department** may, for the effective execution of the provisions of this Act:

- (a) delegate a power conferred on him or her by this Act; and
- (b) assign a duty imposed upon him or her by this Act, except a duty as accounting officer, to an officer or employee of the department, either in his or her personal capacity or by virtue of the rank he or she holds or the post he or she occupies.

(3) An officer or employee to whom a power has been **so** delegated or duty has been **so** assigned, must exercise the power or perform the duty subject to the conditions that the person who made the delegation or assignment considers necessary.

(4) A delegation or assignment-

- (a) must be in writing;
- (b) does not prevent the person who made the delegation or assignment from exercising this power or performing this duty himself or herself; and
- (c) may at any time be withdrawn in writing by the person who granted it.

Expropriation of land required for housing development

15E15D (1)(a) The Minister may by notice in the Provincial Gazette expropriate any land required by him or her for the purposes of housing development in terms of any national or provincial housing programme, if he or she is unable to purchase the land on reasonable terms through negotiation with the owner thereof.

(2)(b) The provisions of sections 1, 6 to 15 and 18 to 23 of the Expropriation Act, 1975 (Act No 63 of 1975), apply, with the necessary changes required by the context, **in respect of the expropriation of land by the Minister in terms of paragraph (a)**, and any reference in any of those sections to the "Minister" must be construed as a reference to the Provincial Minister responsible for the administration this Act.

*(3) The expropriation of land contemplated in subsection (1) must be conducted in consultation with Cabinet, and after consultation with the Portfolio Committee.*

Housing Co-operatives and Associations

15F15E The department *must shall*:

- (a) promote the establishment of housing co-operatives and housing associations in the Province; and
- (b) monitor the registration, functions and development of housing co-operatives and associations".

#### **Amendment of section 16 of Act No. 12 of 1998**

**8. Section 16 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:**

**"(d) ensure the economic and effective provision of housing;**

*Insertion of section 18A in Act No. 12 of 1998*

8. The following section is hereby inserted after section 18 of the principal Act:

*"Regulation of the sale of state funded housing*

*18A. (1) It must be a condition of every housing subsidy, as defined in the Code, granted to a natural person in terms of any national housing programme for the construction or purchase of a dwelling or serviced site that, notwithstanding any provisions to the contrary contained in any other law, such person or his or her successors in title or his or her or their creditors in law must not sell or otherwise alienate such dwellings or site within a period of eight years from the date on which the property was acquired by such person or of the date of registration of a mortgage bond. as the case may be, unless such dwelling or site has first been offered for sale to the department.*



*(2) The offer to the department must be made in writing and must be accepted or rejected by the Minister within a period of 60 days from receipt thereof.*

*(3) If the offer is accepted, the purchase price must be determined-*

*(a) by agreement between the Minister and the person or creditor concerned; or*

*(b) if an agreement cannot be reached, by a valuer acceptable to both parties and registered as such in terms of the Valuers' Act 1982 (Act No 23 of 1982).*

*(4) The purchase price as determined in terms of subsection (3) must be financed by the Minister out of the Fund.*

*(5) The Minister may grant exemption, either conditionally or unconditionally, from the provisions of subsection (1) in respect of any dwelling or site to which the provisions of that subsection apply.*

*(6) The Registrar must-*

*(a) make such endorsements on the title deeds of any dwelling or site and such entries in his or her registers as may be necessary to indicate that the provisions of subsection (1) apply in respect of such dwelling or site; and*

*(b) cancel any such endorsements or entries where an exemption has been granted unconditionally under subsection (5), or where satisfactory proof that conditions imposed under subsection (5) have been complied with has been submitted, or make such endorsements or entries as may be necessary to indicate any conditions subject to which an exemption has been granted under subsection (5).*

*(7) No transfer of any dwelling or site in respect of which subsection (1) applies, shall be passed to a person other than the department unless the Registrar is provided with a certificate, signed by the Deputy Director-General of the department, to the effect that such dwelling or site has been offered for sale to the department in terms of subsection (1) and that:*

*(a) the offer has been rejected; or*

*(b) an exemption has been granted under subsection (5) either unconditionally or subject to the conditions set out in the certificate.*

*(8) The Minister may prescribe by regulation in the Provincial Gazette. rules on the granting of exemption in terms of subsection (5) as well as the amount that must be paid by the person or creditor concerned for the granting of such exemption.*

*Notwithstanding anything to the contrary contained in this section. subsection (1) does not apply to a municipality or a mortgage that exercises its rights in terms of law or a mortgage bond, as the case may be, on the grounds that the person or mortgagor has failed to meet his or her obligations in terms of such law or mortgage bond.*

Repeal of section 31 of Act No. 12 of 1998

9. Section 31 of the principal Act is hereby repealed.

Substitution of the expression "Board" for the expression "Minister" in Act No. 12 of 1998

10. The expression "Board" is hereby substituted for the expression " Minister" wherever it appears in the principal Act.

Substitution of the expression "Secretary" for the expression " Deputy Director-General" in Act No. 12 of 1998

11.10 The expression "Secretary" is hereby substituted for the expression " Deputy Director-General" wherever it appears in the principal Act.

Short title and date of commencement

12.11 This Act *is* **shall be** called the *KwaZulu-Natal Housing Amendment Act, 2000*, and *comes* **shall come** into force on a date to be fixed by the Premier by notice in the **KwaZulu-Natal** Provincial Gazette.