

SOCIAL HOUSING ACT 16 OF 2008

RULES IN RESPECT OF THE TRANSFER OF SOCIAL HOUSING STOCK OR RIGHTS AND THE DISPOSAL OF SOCIAL HOUSING STOCK

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The Social Housing Regulatory Authority has, in terms of section 11(4) of the Act, made
the rules in the Schedule.

**CHAIRPERSON of the Council of the Social Housing Regulatory Authority - Ms
Zohra Ebrahim**

SCHEDULE

ARRANGEMENT OF RULES

1. Definitions

PART I:

2. Purpose
3. Applicable Principles

PART II:

TRANSFER AND DISPOSAL OF SOCIAL HOUSING STOCK

4. Procedures applicable to transfers and disposals (regulation 13(2) and 14)
5. Lapsing or withdrawal of approval of transfer or disposal

PART III:

TRANSFER OF SOCIAL HOUSING STOCK IN TERMS OF REGULATION 13(1)

6. Transfers pursuant to regulation 13(1)

PART IV:

MISCELLANEOUS PROVISIONS

7. Methods and times of delivery

8. Office hours of the Regulatory Authority

9. Costs

10. Title and commencement of rules

FORMS

- FORM A: APPLICATION FOR APPROVAL OF TRANSFER OF SOCIAL HOUSING STOCK IN TERMS OF RULE 4
- FORM B: APPLICATION FOR APPROVAL OF DISPOSAL OF SOCIAL HOUSING STOCK IN TERMS OF RULE 4
- FORM C: APPLICATION FOR EXTENSION OF APPROVAL IN RESPECT OF TRANSFERS AND DISPOSALS IN TERMS OF RULE 5
- FORM D: APPLICATION FOR TRANSFER OF SOCIAL HOUSING STOCK OR RIGHTS IN TERMS OF RULE 6

1. Definitions

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

"applicant" means a social housing institution which has made an application to the Regulatory Authority in terms of rules 3, 4 or 6;

"business day" means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa and "business days" shall have a corresponding meaning;

"days" means calendar days;

"disposer" means a social housing institution which has made an application to the Regulatory Authority in terms of rule 6 to dispose of social housing stock or a social housing institution whose application in terms of rule 6 has been approved;

"Regulations" means the Social Housing Regulations published under Government Notice R51 in *Government Gazette* 34970 of 26 January 2012;

"Restructuring Capital Grant" or **"RCG"** means the restructuring capital grant which is intended to contribute to the spatial, social, and economic restructuring of South African society by contributing to the delivery of viable, feasible and sustainable social housing projects which provide affordable rental housing to the poor;

"rights" mean rights which a social housing institution has in relation to social housing stock;

"Social Housing Programme" means the Social Housing Programme, the objectives of which are to:

- (i) contribute to the national priority of restructuring South African society in order to address structural, economic, social and spatial dysfunctions thereby contributing to Government's vision of an economically empowered, non-racial, and integrated society living in sustainable human settlements; and
- (ii) improve and contribute to the overall functioning of the housing sector and in particular the rental sub-component thereof, especially insofar as social housing is able to contribute to widening the range of housing options available to the poor;

"transferee" means the social housing institution which takes transfer, or is intended to take transfer, of social housing stock or rights in accordance with rules 3 or 4;

"transferor" means the transferor, or intended transferor, of social housing stock or rights in terms of rules 3 or 4;

a social housing institution **"under administration"** means a social housing institution which has been placed under administration by a high court as contemplated in section 12(9) of the Act.

PART I:

2. Purpose

The purpose of these rules is to set out the principles applicable to and the process for the transfer of social housing stock or rights, as contemplated in regulation 13 of the Regulations, and the disposal of social housing stock, as contemplated in regulation 14 of the Regulations, and any matters ancillary thereto.

3. Applicable principles

- 3.1 Transfers of social housing stock or rights shall be guided by the following over-arching principles -
 - 3.1.1 the need to retain social housing stock to meet the current needs and the reasonably foreseeable needs for social housing;
 - 3.1.2 the rights and interests of the tenants must not be prejudiced by a transfer of social housing stock or rights and they should not be in a less favourable position as a result of the transfer;
 - 3.1.3 a suitable social housing institution willing and able to take over the social housing stock must be identified;
- 3.2 Disposals of social housing stock which may result in the stock being lost to the social housing sector will only be permitted by the Regulatory Authority if -
 - 3.2.1 there is sufficient alternative social housing stock within a reasonable distance from the social housing stock to be disposed to meet the needs

of the community, including the qualifying tenants of the social housing stock proposed to be disposed;

- 3.2.2 the economic rationale for the proposed disposal is that it is no longer economically viable for the social housing stock to be retained and maintained as such. The economic sustainability and viability criteria as set out in the Regulations shall be applied in determining fulfilment of this requirement.

PART II

TRANSFER AND DISPOSAL OF SOCIAL HOUSING STOCK IN TERMS OF REGULATION 13(2) AND REGULATION 14

4. Procedure for transfers and disposals

- 4.1 No social housing institution shall transfer or dispose of social housing stock to another social housing institution save with the express written consent of the Regulatory Authority.
- 4.2 A social housing institution that intends to transfer or dispose social housing stock to another social housing institution shall apply in writing to the Regulatory Authority for approval in respect of the proposed transfer. Such application shall be made on Form A for the purposes of a transfer and on Form B for the purposes of a disposal.
- 4.3 For the remainder of this rule -
- 4.3.1 an application to transfer and an application to dispose shall be referred to as "the transfer application";
- 4.3.2 the parties to the intended transfer or disposal shall be referred to as:
- 4.3.2.1 the "transferor" being a reference to the applying party; and
- 4.3.2.2 the "transferee" being the party to whom the social housing stock is to be transferred or disposed.
- 4.4 The transfer application shall contain at least the following:
- 4.4.1 full details of the transferor and the transferee;

- 4.4.2 a description of the nature of the proposed transfer;
- 4.4.3 details of whether the social housing stock was acquired, developed or refurbished by the transferor;
- 4.4.4 details of the funding model that was used to fund the project which is the subject of the transfer application. The transferor must provide the Regulatory Authority with a detailed breakdown of the funding procured for the project indicating the total funding procured in terms of the Institutional Subsidy Programme and the RCG programme, provincial funding, debt finance and/or equity finance;
- 4.4.5 full details of the social housing stock which is the subject of the proposed transfer, including the number of units or buildings comprising the social housing stock, the number of units which are occupied and unoccupied, and the market value of the social housing stock (including a breakdown of the value per unit or building, where the value per unit is not reasonably ascertainable), as determined by a qualified independent property valuer;
- 4.4.6 a copy of the curriculum vitae of the property valuer referred to in rule 4.4.5;
- 4.4.7 a copy of the valuation report prepared by the independent property valuer referred to in rule 4.4.5;
- 4.4.8 details of the price (if any) which the transferee will pay to take transfer of the social housing stock which is the subject of the transfer application (including a breakdown of the price per unit or building) taking cognisance of the fact that the transferor may not gain a profit as a result of the transfer;
- 4.4.9 a copy of the tenant or membership roll referred to in regulation 3(7)(f) of the Regulations in respect of the social housing stock which is the subject of the proposed transfer;
- 4.4.10 details of the rent payable by tenants residing in the social housing stock which is the subject of the transfer;
- 4.4.11 the payment history by the tenants of their rentals;
- 4.4.12 detailed reasons for the proposed transfer or disposal;

- 4.4.13 detailed reasons why the Regulatory Authority should approve the transfer or disposal;
- 4.4.14 implications of the proposed transfer or disposal on the rights of tenants;
- 4.4.15 a draft transfer or disposal agreement (as the case may be) recording the provisional terms and conditions between the parties in relation to the proposed transfer, which must stipulate, amongst other things, that:
- 4.4.15.1 the transferor will ensure that any large scale maintenance and any other maintenance or repairs as agreed to between the parties or as determined by the Regulatory Authority will be carried out by the transferor prior to the transfer or disposal;
 - 4.4.15.2 in the case of a proposed transfer, that such transfer will not negatively affect the rights enjoyed by existing tenants and the transferee will administer the social housing stock substantially on the same terms and conditions applicable prior to the transfer; and
 - 4.4.15.3 in the case of a proposed disposal and only where the social housing stock is to be sold on the open market, a detailed plan explaining and committing to a reasonable relocation plan to alternative social housing units for tenants who qualify for such social housing, such plan having to adequately address the accommodation needs of all such tenants;
- 4.4.16 a letter from the proposed transferee on its letterhead confirming its intention to take transfer of the social housing stock which is the subject of the proposed transfer, motivating why the transferee is suitable to take transfer of the social housing stock and explaining in detail how it will manage the social housing stock, and how, where applicable, it will comply with the obligations imposed on social housing institutions by the Act and the Regulations (particularly the qualifying criteria set out in regulation 3 of the Regulations);
- 4.4.17 sworn undertakings from the transferor and transferee that should the transfer application be approved by the Regulatory Authority, the transferor and the transferee will conclude a transfer agreement which is in all material respects the same as the draft transfer agreement referred to in rule 4.4.15 and that it will not infringe upon or terminate the security of tenure of existing residents who meet the terms and conditions of their

tenancy prior to, during, and, in the case of the transferee, after the transfer;

- 4.4.18 a sworn undertaking from the transferee, except where the transaction is a disposal which may result in the stock being sold on the open market, that should the application be approved by the Regulatory Authority and the transfer is implemented, the transferee will safeguard and maintain the social housing stock which is the subject of the transfer;
- 4.4.19 proof that the transferor consulted with the tenants or a committee mandated by the tenants to inform them of the proposed transfer or disposal, explained its implications in relation to the rights of the tenants and invited the tenants to provide it with comments in writing in relation to the proposed transfer or disposal;
- 4.4.20 copies of any written comments or objections furnished to the transferor by the tenants or a committee of representatives mandated by the tenants in relation to the proposed transfer or disposal;
- 4.4.21 where the transferor received objections from the tenants or a committee of representatives mandated by the tenants:
 - 4.4.21.1 a detailed explanation of the steps which the transferor and/or the transferee took or will take to resolve the objections;
 - 4.4.21.2 confirmation of whether the objections have been resolved; and
 - 4.4.21.3 where the transferor indicates that the objections have been resolved, proof of and the nature of such resolution;
- 4.4.22 where applicable, proof that the transferor notified any private funder to whom money is owed by the transferor in respect of the relevant project, of the proposed transfer and written proof of the consent of the private funders to the proposed transfer or disposal;
- 4.4.23 where the transferor seeks to transfer the social housing stock on the basis that it is no longer financially sustainable for it to manage such stock, it shall explain how the transferee shall ensure it will manage the social housing stock in a financially sustainable manner with reference to the criteria for financial sustainability contemplated in the Regulations;
- 4.4.24 in the case of a proposed disposal:

- 4.4.24.1 details of the municipality in whose area of jurisdiction the social housing stock which is the subject of the proposed disposal is situated;
- 4.4.24.2 submissions on whether there is sufficient social housing stock in the area in which the social housing stock which is the subject of the application is situated and whether there is any need to retain the social housing stock which is the subject of the disposal application as social housing.
- 4.5 Within 90 (ninety) days of receipt of the application, the Regulatory Authority shall, having considered the transfer application and such other factors as may be appropriate in the circumstances:
- 4.5.1 grant the transfer application with or without conditions, or
- 4.5.2 refuse the application.
- 4.6 The Regulatory Authority shall, within 14 (fourteen) days of taking its decision, notify the transferor in writing of its decision and, where it has refused the transfer application, it shall, upon written request, provide the reasons for its decision.
- 4.7 Should the Regulatory Authority approve the application, the transferor and transferee shall ensure that the transaction is executed in accordance with all relevant legislation applicable to the transfer of immovable property.
- 4.8 If the Regulatory Authority approved a transfer application subject to conditions (as provided for in rule 4.5.1), and one or more of such conditions must be fulfilled prior to the transfer or disposal, then the transaction may not be effected until such time as the conditions have been fulfilled.
- 4.9 The Regulatory Authority shall update the register accordingly to reflect the transfer or disposal of the social housing stock to the transferee.
- 4.10 The Regulatory Authority may appoint an independent accountant and a public auditor to consider the valuation report referred to in rule 4.4.7 and to independently value the social housing stock. Where the independent accountant and public auditor determines that the value of the social housing stock to be different to that of the value reflected in the valuation report, the Regulatory Authority shall be entitled to rely on the value furnished to it by the

independent accountant and public auditor appointed for the purposes of considering the transfer application.

5. Lapsing or withdrawal of approval in respect of transfer application

- 5.1 Should the Regulatory Authority approve a transfer or disposal, such approval shall lapse in the event that the transfer or disposal is not effected within a period of 6 (six) months, reckoned from the date on which the applicant is notified of the approval.
- 5.2 The Regulatory Authority may, on good cause shown, extend the 6 (six) month period contemplated in rule 5.1, provided that the transferor applies at least 30 (thirty) days prior to the lapsing of the period for such an extension. The application shall be made in writing on Form C. The Regulatory Authority shall notify the transferor of its decision in this regard in writing at least 7 (seven) days prior to the expiry of the 6 (six) month period contemplated in rule 5.1 and, where the Regulatory Authority has refused the application, it shall, upon written request, provide the transferor with the reasons for the refusal. The Regulatory Authority may withdraw an approval of a transfer or disposal prior to the transaction being finalised should it become apparent that any of the information provided to the Regulatory Authority in the transfer application was false or misleading in a material respect.
- 5.3 In the event that an approval lapses in terms of rule 5.1 or is withdrawn by the Regulatory Authority in terms of rule 5.3, and should the transferor wish to pursue the transaction further, it must submit a new application for approval in accordance with the provisions of rule 4.

PART III

6. Procedure for transfers in terms of section 12(9)(c) and regulation 13(1)

- 6.1 Subject to rule 6.4 below, a transfer contemplated in section 12(9)(c) of the Act shall be preceded by the following procedure:
- 6.1.1 The Regulatory Authority shall appoint an independent accountant and public auditor who, as required by regulation 13(1) of the Regulations, shall determine the value of the social housing stock or rights which the Regulatory Authority intends transferring to a social housing institution in terms of section 12(9)(c) of the Act. In determining such value, the

independent accountant and public auditor shall have regard to the factors contemplated in rules 6.1.2.1 and 6.1.2.10 and to the views of other social housing institutions on the reasonable price for such social housing stock or rights.

- 6.1.2 The independent accountant and public auditor shall prepare a preliminary valuation of the social housing stock. Unless otherwise directed by the Regulatory Authority, the independent accountant and public auditor shall solicit the views of social housing institutions in relation to the value of the social housing stock and, in such solicitation, shall furnish to the social housing institutions the preliminary valuation. In addition to such valuation, any of the following information relating to the social housing stock in question may be disclosed -
- 6.1.2.1 the number of units;
 - 6.1.2.2 the number of units that are currently occupied and the number of units that are vacant;
 - 6.1.2.3 the amount of units falling within each size category (ie 1, 2 or 3 bedroom units);
 - 6.1.2.4 the occupancy level of each size category of units;
 - 6.1.2.5 details of the lease agreements in place;
 - 6.1.2.6 the payment history of the tenants;
 - 6.1.2.7 the debt finance encumbering the housing stock, if any;
 - 6.1.2.8 the financial statements of the social housing institution; and
 - 6.1.2.9 a synopsis of the condition of the units and the expected maintenance and repairs that are necessary;
 - 6.1.2.10 any other information which the independent accountant and public auditor deems relevant.
- 6.1.3 Social Housing Institutions will be provided with 10 (ten) days to furnish its views, or such shorter or longer period as directed by the Regulatory Authority.
- 6.1.4 The Regulatory Authority shall determine the date by which the independent accountant and public auditor must make the determination

taking into account the exigencies and extent of the distress of the housing stock.

- 6.1.5 Upon receipt of the determination from the independent accountant and public auditor, or as soon as possible thereafter, the Regulatory Authority shall send a written notice to duly accredited social housing institutions which, in its sole discretion, it believes are in a reasonable position to take transfer of the social housing stock or rights, inviting them to submit a written application to the Regulatory Authority for the transfer of the social housing stock or rights to such social housing institution.
- 6.1.6 Any notified social housing institution which is prepared to take transfer of the social housing stock or rights shall, in response to the notice in rule 6.1.5, submit its written application within 14 (fourteen) days of receiving the notice, or within such shorter or longer period as directed by the Regulatory Authority, failing which it shall be eliminated from the process.
- 6.1.7 A social housing institution shall make an application referred to in rule 6.1.5 on Form D. In its application, the social housing institution shall show good cause why the social housing stock or rights should be transferred to it and shall explain in detail how it will manage the social housing stock or rights, bearing in mind the obligations imposed on social housing institutions under the Act and the Regulations (particularly the qualifying criteria set out in regulation 3 of the Regulations).
- 6.1.8 The Regulatory Authority shall, within 60 (sixty) days of the expiry of the period in rule 6.1.5 consider all applications properly made and, having regard to such considerations which are appropriate in the circumstances, make a decision as to which social housing institution shall receive transfer of the social housing stock or rights of the social housing institution under administration. Where appropriate, the Regulatory Authority may decide that the social housing stock or right shall be transferred to more than one social housing institution.
- 6.1.9 The Regulatory Authority shall inform every social housing institution which submitted an application of its decision within 14 (fourteen) days of taking its decision.
- 6.1.10 The decision of the Regulatory Authority is final.

- 6.1.11 The Regulatory Authority shall transfer the social housing stock or rights and the transferee shall take transfer thereof in accordance with all relevant legislation applicable to the transfer of immovable property or rights.
- 6.2 After the transfer has taken place, the Regulatory Authority shall credit the transferee with the value of the social housing stock or rights, as contemplated in regulation 13(1).
- 6.3 The Regulatory Authority shall update the register accordingly to reflect the transfer of the social housing stock or rights of the social housing institution under administration to the transferee.
- 6.4 The Regulatory Authority may, in appropriate circumstances, transfer social housing stock or rights as contemplated in section 12(9)(c) directly to a suitable social housing institution without -
- 6.4.1 requiring the independent accountant and public auditor to solicit and obtaining the views of social housing institutions as contemplated in rule 6.1.2 but, for the avoidance of doubt, in determining the value, the independent accountant and public auditor must take into account the factors listed in rules 6.1.2.1 to 6.1.2.10;
- 6.4.2 following the processes in rules 6.1.3, 6.1.5, 6.1.6, 8.1.7, 6.1.8 and 6.1.9.

PART IV

MISCELLANEOUS PROVISIONS

7. Methods and times of delivery of documents

- 7.1 A notice or document to be delivered for any purpose contemplated in these rules may be delivered in any of the methods set out in Table A.
- 7.2 A document delivered by a method listed in the second column of Table A will be deemed to have been delivered to the intended recipient on the date and at the time shown opposite that method, in the third column of the Table A.
- 7.3 If the date and time for the delivery of a document referred to in the Table A to the Regulatory Authority is outside of its office hours, as set out in rule 8.1,

that document will be deemed to have been delivered on the next business day, subject to rule 8.2.

7.4 A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must be accompanied by a cover message, in either case setting out -

7.4.1 the name, address, and telephone number of the sender;

7.4.2 either -

7.4.2.1 the name of the person to whom it is addressed, and the name of that person's attorney, if applicable; or,

7.4.2.2 the name or description of the class of intended recipients, if the document is being delivered generally to all the members of a particular class of persons;

7.4.3 the date of the transmission; and

7.4.4 in the case of a fax transmission -

7.4.4.1 the total number of pages sent, including the cover page; and

7.4.4.2 the name and telephone number of the person to contact if the transmission is incomplete or otherwise unsuccessful.

Table A

Nature of Person to whom the document is to be delivered	Method of Delivery	Date and Time of Deemed delivery
ANY PERSON	By faxing the notice or a certified copy of the document to the person, if the person has a fax number; or	On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a copy of the document by electronic mail, if the person has an address for receiving electronic mail; or	On the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time.

	By sending the notice or a certified copy of the document by registered post to the person's last-known address; or	On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.
	By any other means authorised by the High Court; or	In accordance with the order of the High Court.
	By any other method allowed for that person in terms of the following rows of this Table.	As provided for in terms of that method of delivery.
ANY NATURAL PERSON	By handing the notice or a certified copy of the document to the person, or to any representative authorised in writing to accept service on behalf of the person; or	On the date and at the time recorded on a receipt for the delivery.
	By leaving the notice or a certified copy of the document at the person's place of residence or business with any other person who is apparently at least 16 years old and in charge of the premises at the time; or	On the date and at the time recorded on a receipt for the delivery.
	By leaving the notice or a certified copy of the document at the person's place of employment with any person who is apparently at least 16 years old and apparently in authority.	On the date and at the time recorded on a receipt for the delivery.
THE REGULATORY AUTHORITY	By entering the required information in an electronic representation of that form on the internet website, if any, maintained by the Regulatory Authority, if the document is in a prescribed form; or	On the date and at the time recorded by the Regulatory Authority's computer system, as verified by fax reply to the sender of the information.
	By transmitting the document as a separate file attached to an electronic mail message addressed to the Regulatory Authority; or	On the date and at the time recorded by the Regulatory Authority's computer system, unless, within 1 (one) business day after that date, the Regulatory Authority advises the sender that the file is unreadable.

	By sending a computer disk containing the document in electronic form, by registered post addressed to the Regulatory Authority; or	On the date and at the time of delivery of the registered post to the Regulatory Authority, as recorded by the post office, unless, within 1 (one) business day after that date, the Regulatory Authority advises the sender that the disk is unreadable.
	By handing the document, or a computer disk containing the document in electronic form, to the Regulatory Authority.	On the date and at the time noted in a receipt issued by the Regulatory Authority unless, the document is on a computer disk, and, within 1 (one) business day after that date, the Regulatory Authority advises the sender that the disk is unreadable.
A MUNICIPALITY	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any person acting on behalf of that person.	On the date and at the time recorded on a receipt for the delivery.

8. Office hours of the Regulatory Authority

8.1 The offices of the Regulatory Authority are open to the public every 08h00 to 16h30 from Monday to Friday, excluding any public holiday.

8.2 Despite rule 8.1, in exceptional circumstances the Regulatory Authority may -

8.2.1 close to the public if the Regulatory Authority considers it necessary to do so in the interests of safety, security, inability to properly perform its functions or other appropriate reason; or

8.2.2 accept documents on any day and at any time.

9. Costs

The Regulatory Authority shall not be liable for any costs incurred by an applicant or any other person, whether directly or indirectly, in relation to any application submitted to the Regulatory Authority in terms of these rules.

10. Title and commencement of rules

These rules shall be called the Rules in respect of the Transfer of Social Housing Stock or Rights and the Disposal of Social Housing Stock, 2014, and shall come into operation on the day of publishing in the Government Gazette.

FORM A

APPLICATION FOR APPROVAL OF TRANSFER OF SOCIAL HOUSING STOCK IN
TERMS OF RULE 4

FORM B

APPLICATION FOR APPROVAL OF DISPOSAL OF SOCIAL HOUSING STOCK IN
TERMS OF RULE 4

FORM C

APPLICATION FOR EXTENSION OF APPROVAL IN RESPECT OF TRANSFERS AND
DISPOSALS IN TERMS OF RULE 5

FORM D

APPLICATION FOR TRANSFER OF SOCIAL HOUSING STOCK OR RIGHTS IN TERMS
OF RULE 6